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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 30th September 1955

S.R.O. 2245.—Whereas the election of Shri Sheo Bhajan Singh as a member of the Bihar Legislative Assembly from the Jahanabad Constituency was called in question by an election petition presented by Shri Fida Hussain S/o Syed Abdul Aziz, P.O. Jahanabad, District Gaya;

And whereas the Election Tribunal appointed by the Election Commission for the trial of the said petition dismissed it by an order dated the 29th January, 1953 and thereafter ceased to exist;

And whereas the High Court of Judicature at Patna, on the writ petition of the petitioner, set aside the order of the Election Tribunal;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the Representation of the People Act, 1951 (No. XLIII of 1951) for further trial of the said petition has, its pursuance of the provisions contained in Section 103, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions contained in Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL AT ARRAH.

PRESENT .

Mr. S. C. Prasad—*Chairman.*

Mr. K. D. Sahay—*Member.*

Mr. K. D. Chatterji—*Member.*

(In the matter of election to the Bihar Legislative Assembly, 1952 from Jahanabad Constituency, District Gaya, State of Bihar).

ELECTION CASE No. 215 of 1952

Fida Hussain—*Petitioner.*

Versus

1. Sheo Bhajan Singh,
2. Md. Ishaque,
3. Kedar Nath Shandil,

4. Thaneshwar Prasad,
5. Murlidhar Khaitan,
6. Sham Narain Singh,
7. Mathura Das,
8. Harihar Carain, and
9. Rajeshwari Prashad—Respondents.

For the Petitioner: Shri Brajkishore Narain Singh, Advocate,

Shri Dharendra Bahadur Singh, Pleader.

For Respondent No. 1: Shri Kanhaiya Prasad Verma, Advocate,

Shri Aswani Kumar Sinha, Pleader.

JUDGMENT

This is an election petition filed by Sri Fida Hussain for declaring that the election of Respondent No. 1, Shri Sheobhain Singh, to the Bihar Legislative Assembly from Jahanabad constituency is void and that he, the petitioner, has been duly elected.

2. The petitioner was a candidate of the Congress party while the elected member, Respondent No. 1 who is a member of the Socialist Party had been set up by that party as a candidate for the seat. There were six other contesting candidates, one of whom was Mohammad Ishaque, Respondent No. 2,

3. This constituency in question consisted of all the villages of Chowkidari union numbers 1 to 10 of Jahanabad Thana in Jahanabad Sub-division of the district of Gaya. There were 53 booths in this constituency and different dates had been fixed for the recording of the votes for different booths. Twenty-fourth November, 1951, was the last date for filing nomination papers and the scrutiny of those papers was held by the Returning Officer, namely the Sub-divisional Officer of Jahanabad Sub-division, on 27th November 1951 in his chamber in Jahanabad town. All the nomination papers were held valid and the elections were held on the dates fixed for the polling. On the appointed date, namely 28th January, 1952, the votes were counted and Respondent No. 1 was declared elected, having secured 7794 votes while the petitioner secured 7258 votes. Respondent No. 2, Md. Ishaque, secured 779 votes, Respondent No. 3 secured 2694 votes, Respondent No. 4 secured 1515 votes and Respondent No. 7 secured 754 votes. Respondents 5, 6, 8 and 9 appear to have withdrawn their candidatures before the election and within time after the scrutiny of the nomination papers.

4. The grounds taken up by the petitioner to challenge the election are mainly and briefly as follows:—

(a) The first ground is about the invalidity of the nomination paper of Respondent No. 2, Md. Ishaque. It has been said that he was disqualified from standing as a candidate under section 7(d) of the Representation of People Act 1951, because on the date of his filing the nomination paper, he was a contractor of the Public Works Department of the Government of Bihar. It has been further alleged that this improper acceptance of the nomination paper of Md. Ishaque by the Returning Officer in spite of objections had materially affected the result of the election, because if Md. Ishaque had not been in the field, in view of the great sacrifices and services rendered by the petitioner to the public of the locality and the Congress organisation, of which he was a candidate, he must have secured at least 90 per cent. of the votes cast in favour of opposite party No. 2.

(b) The second ground is that Respondents 1 to 4 and 7 being fully aware of the fact that none of them would be able to secure votes by legal means, had adopted all kinds of illegal and corrupt practices as a result of which Respondent No. 1, the contesting petitioner, secured the highest vote and came to be elected. These corrupt and illegal practices alleged are as follows:—

(i) That at Manian, Kati and Chanpura booths, the voters were prevented by riot and violence from recording their votes. These riot and violence had been perpetrated by the member of the Socialist Party on the voters who were coming to the booths to record their votes in favour of the petitioner and this had materially affected the result of the election;

(ii) That at Kenari the Presiding Officer did not attend the booth till 3 P.M. and on 17th January 1952 the Polling Officer did not entertain the petitioner's grievances occasioned by the absence of the Presiding Officer and the result was

that a large number of voters left the booth disappointed without casting their votes;

(iii) That at Bistol booth about 150 voters of several villages left the booth without recording their votes as the Presiding Officer without any reason, had arrested one Kailash Singh, a Congress worker which resulted in a panic among the voters;

(iv) That at the same booth Bistol the Presiding Officer had canvassed the voters asking them to vote in the box containing the symbol 'tree' which was the symbol of Respondent No. 1. On 11th January 1952 the petitioner had brought those facts to the notice of the Returning Officer at Jahanabad. He promised to enquire into the matter but did not do it.

(v) That the voters of village Nisarpura, which should have been assigned to Ghosi constituency, were assigned to Jahanabad constituency on 17th January, 1952 (i.e., the actual date of polling) with the result that at Barhauna booth these voters cast their votes in Jahanabad constituency. It is urged by the petitioner that this had seriously affected the result of the election, because those votes should have been excluded.

(vi) That no voter of Salamchak was recorded in the voters' list of Jahanabad constituency and when this was pointed out at Kako booth, some of the voters were not permitted to vote but before this many voters of village Salamchak had already recorded their votes at Kako booth, alleging that they were recorded as voters in the voters' list and that it was by sheer oversight that instead of village Salamchak, village Satanpur had come to be mentioned in respect of their residence in that list.

(vii) That at Kako booth on 18th January 1952, the voters up to serial No. 3528 were to poll their votes according to the official programme, but the Presiding Officer allowed voters beyond that serial number to record their votes. When objection was raised, the Presiding Officer told the petitioner that he had informed the Returning Officer not to count the votes beyond serial No. 3528, but this was also not done.

(viii) That at the time of the counting of the votes several paper-seals of a number of ballot boxes were without any signatures of the Presiding Officer or of the agents of the petitioner. This indicated that the ballot boxes had been tampered with. This was pointed out to the Returning Officer but he did not pay any heed to it.

(ix) That at Chanpura, Amain and Babhana booths Respondent No. 1, Shri Sheobhajan Singh had paid 8 annas per head to the voters, the names of some of whom have been given in the election petition, to vote for him and that they actually voted for him after having received this money.

(x) That Shri Sheobhajan Singh, Respondent No. 1, had brought some voters on mechanised vehicles, lorries at Mai, Kako, Nonahi and other booths and that he had not shown the expenses incurred by him on this matter in his return of election expenses.

(xi) That Shri Sheobhajan Singh had also rented a house in Jahanabad from November, 1951 to 31st January, 1952 where he had established a regular kitchen for feeding his voters and workers, but those expenses had not been shown in the return of the election expenses.

(xii) That with the sanction and connivance of the respondents or their agents, systematic appeals were made to the masses to cast their votes on his behalf or to refrain from voting, by appealing to their sentiment of caste, race, community and religion.

But this ground is not pressed at the trial. No issue is raised nor is evidence adduced on it.

(xiii) That handbills were distributed with the sanction and connivance of the other respondents or their agents. In one of the handbills, it was said that if the voters voted for the Socialist Party candidate, each cultivator would get 20 bighas of land and specific head of cattle and so on and in the other, one Sakal Singh, the polling agent of the petitioner, was scandalised by the imputing to him several immoral acts. It is alleged that the handbills had been distributed by Shri Sheobhajan Singh, Respondent No. 1, although they did not bear the names of the press and the printers.

5. On the aforesaid grounds, the petitioner has prayed for the reliefs mentioned above.

6. The case has been contested by Respondent No. 1, Shri Sheobhajan Singh, who had been declared elected. Three of the other respondents have deposed for the petitioner though they have filed no written statement. They are Md. Ishaque (Respondent No. 2) and Murlidhar Khetan (Respondent No. 5), and Sham Narain Singh (Respondent No. 6). On behalf of the contesting Respondent No. 1, two respondents, namely Harihar Garai and Rajeshwari Prasad (Respondent Nos. 8 and 9) have deposed. They were subsequently added as parties to the case. They have also not filed any written statement.

7. The written statement by the only contesting Respondent No. 1 in substance is that the election petition is not maintainable and is bad for non-joinder as also for defective signing and verification. It is also said to be bad for vagueness and is liable to be rejected.

(a) Regarding the grounds enumerated above on which the election has been challenged by the petitioner, the Respondent does not admit that Respondent No. 2 was a P.W.D. contractor and as such disqualified. Besides, he challenges the claim of the petitioner that he would have secured 90 per cent. of the votes polled by Respondent No. 2 and contends that the result of election has not been materially affected on this score.

(b) He challenges the allegation about coercion, intimidation, violence, bribery, undue influence and other corrupt means alleged to have been practised. There was no corrupt practice, bribery, undue influence, coercion or intimidation and violence indulged in by the respondent or his agent or workers. He asserts that the polling was free and voluntary and the voters exercised their franchise without any fear.

(c) Coming now to the particular instances of corrupt and illegal practices, the respondent contends *inter alia*.

(i) That at Maniama, Hati and Chanpura booths, there was no assault on voters and there was no violence practised by the respondent or his men to prevent the voters from exercising their right of franchise and as a matter of fact there was free, peaceful and brisk voting at the booths.

(ii) That the complaint about absence of Presiding Officer at Kenari booth is not true. The Presiding Officer there attended the booth from the very beginning up to the end and the polling went on smoothly and briskly.

(iii and iv). That there was no canvassing by the Presiding Officer at Bistol booth. It is contended that Presiding Officer was independent, impartial and was doing his duties according to law. There is, however, no clear denial on the point of arrest of Kailash Singh except the general denial of all the allegations in the several schedules of the election petition.

(v) That Nisarpura was not in Ghosi constituency as alleged and that it was in Jahanabad constituency according to the corrected electoral roll as finally published.

(vi) About Salamchak, there is a general denial of the allegation in para. 14 and it is contended therein that only those persons were allowed to cast their votes who were recorded in the electoral roll as voters. It is stated that Salamchak was a small hamlet appertaining to Satanpur and consequently the residents of the place were enrolled under Satanpur in the electoral roll. It is incorrect to say that anyone was prohibited from recording his vote.

(vii) Similarly, there is a general denial under Para. 15 of the written statement of the assertion regarding Kako booth.

(viii) Regarding the tampering of a number of ballot boxes there is a general denial in paras. 16 and 20 of the written statement.

(ix) That there was no payment by the respondent or his agent or workers of 8 annas or any other sum to any man at Chanpura, Amain or Babhana booths. The persons named in schedule 4 of the election petition were never given any sum.

(x) That the respondent never owned any car at all and challenged having carried any voter to Mai, Kako, Nonahi or any other booth on car, or on any conveyance or mechanised vehicle.

(xi) That the rented house at Jahanabad from November, 1951 to January, 1952 was the office of the Socialist Party and no worker, agent or man of the respondent lived and were fed therein. The allegation about his having fed

about 50 persons a day is wrong. He maintains that the return of election expenses filed by him is correct.

(xii) The allegations in para. 12 of the petition regarding community grouping is denied as incorrect. There was no coercion or intimidation exercised by any particular group or section on another community, group or section to vote for the respondent or refrain from voting for the petitioner by appealing to the sentiment of caste, race or religion.

(xiii) No circulars or posters were issued by or at the sanction or connivance of the respondent, his agent or workers. He denies to have distributed any leaflet against Sakal Singh who, according to him, was never the agent of the petitioner.

The improper reception or refusal of votes as alleged in the petition is also challenged as incorrect.

8. The following issues have been framed in this case:—

- (1) Is the Election petition as filed maintainable?
- (2) Has the petitioner any cause of action for the filing of the election petition?
- (3) Has the election petition been verified and presented in the manner prescribed by law?
- (4) Is the election petition bad for non-joinder of Harihar Garain and Rajeshwar Prasad as parties to this election petition?
- (5) Is the election petition bad for non-compliance with section 83 of R. P. Act, if so, is the petition liable to be dismissed?
- (6) Was the Respondent No. 2 Md. Ishaque disqualified to stand as a candidate? Has the acceptance of his nomination paper materially affected the result of the Election?
- (7) Have the respondents practised any corrupt practice, of bribery and committed intimidation and assault on the voters?
- (8) Was there any improper reception or refusal of votes by the Presiding Officers?
- (9) Did the Respondent No. 1 get printed and distributed pamphlets A and B?
- (10) Were any voters carried by Respondent No. 1 at the Polling Booth in mechanised vehicles?
- (10A). Is the return of election expenses incurred by Respondent No. 1 false as alleged?
- (11) Was there any canvassing by Presiding Officers at Bistol Booth in favour of Respondent No. 1?
- (12) Was there any violation of any rule of conduct of Election at Kanari Booth?
- (13) Was there any distribution of money by Respondent No. 1 to voters of Chainpur, Amain and Babhana Booths?
- (14) Was there any treating by the Respondent No. 1 of voters at any booth or near the booth?
- (15) Was there any tampering of Ballot Boxes of the petitioner after the Polls?
- (16) Is the election of Respondent No. 1 fit to be set aside?
- (17) Is the petitioner entitled to be declared elected?
- (18) Is Respondent No. 1 guilty of any corrupt practice or practices?
- (19) Is the petitioner entitled to any other relief or reliefs?

FINDINGS

Issue Nos. 1 to 4

9. These issues have not been pressed at the time of argument. There is nothing against the maintainability of the election petition as filed, though there might be some defects on particular points which have been dealt with at proper places. The allegations in the petition do constitute sufficient cause of action and nothing has been said regarding any defect in the verification or in the manner of presentation of the petition. It is true that the petitioner has verified all the allegations in the petition and schedules as correct to the best

of his personal knowledge, but there can be hardly any illegality on this score. The point of non-joinder of Harihar Garain and Rajeshwar Prasad has already been complied with as they have been impleaded under the orders of the High Court. These four issues are, therefore, disposed of accordingly.

Issue Nos. 8 and 12

10. These two issues for the sake of convenience have been divided by us into two parts, (1) dealing with matters in dispute regarding Salamchak, Kako and Nisarpura booths and (2) those in respect of Kanari and Bistol booths.

Part I—(a) Salamchak

11. This objection finds mention in para. 15 of the petition and para. 6 of schedule III therein and the denial is contained in para. 14 of the written statement. At the time of the trial, it is conceded on both sides that Salamchak is a hamlet of village Kako, to which also appertains Satanpur, another hamlet. The position taken in the written statement that Salamchak appertains to Satanpur and as such the voters of the place were enrolled under Satanpur in the voters' list is given up at the trial, where the case has been that entry at page 1317 of the electoral Roll is mistake. It should have been Salamchak and consequently the Presiding Officer was entitled to overlook it under Rule 23(3) of the Representation of the People (Conduct of Elections and Elections Petitions) Rules, 1951 (hereafter referred to as the rules) and secondly that these persons being qualified as voters and recorded as such in the Electoral Roll of Jahanabad constituency, are entitled to vote in it.

12. The case of the petitioner in substance is that no resident of Salamchak was a voter, still they had cast their votes posing themselves as voters of Satanpur. After some votes were cast, the Presiding Officer was informed and he is said to have promised that the votes would be excluded at the time of the counting but this was not done and hence the grievance. The petitioner has examined, in support of his case on the point, P.Ws. 5, 48, 52, 53, 56, 63, 65, 66 and 75 while R.Ws. examined are Nos. 14 and 38.

13. Now we take up the evidence of the aforesaid witnesses to see how far the allegation has been proved and if so, whether the result of the election has been materially affected. P.W. 5 Badri Narain Singh has been examined as a polling agent of the petitioner at Kako, a point which has been disputed and no polling agent form of the booth is produced to support that he was actually a polling agent there. At any rate, we would discuss below that this witness, apart from being highly interested in the petitioner, has a long-standing grudge against the respondent, his co-villager and his evidence has to read with caution. He stated in substance that Salamchak was not included in the voters list of the constituency in question and the voters of that place had cast their votes as voters of Satanpur. Objection was raised on this score between 12 A.M. and 1 P.M. when about 25 voters were already cast. The Presiding Officer thereafter stopped recording their votes and he promised to write to the Returning Officer to exclude the votes of Salamchak at the time of counting. He was present at the time of counting and objection being raised by him, the Returning Officer did not accept his contention on the ground that the alleged letter of the Presiding Officer could not be opened by him. He directed him to contact the Election Commissioner on phone and this was done by the petitioner Fida Hussain himself, but the Election Commissioner refrained from giving any reply at that stage. It does not stand to reason why the Returning Officer could not open any letter of the Presiding Officer addressed to him. Besides, Fida Hussain (P.W. 75) who had phoned to the Chief Electoral Officer, Bihar, does not exactly support him. He stated to have telephoned the officer on another point, i.e., exclusion of votes polled beyond certain serial numbers at Kako, a point which we shall take up hereafter. The Presiding Officer (P.W. 65) does not exactly support him when he said that some objection had been raised, but he did not remember about which tola nor did he remember the nature of the objection or the action taken by him. He did not remember, even when Salamchak was specifically put to him. Ex. A/2, the report of this officer regarding the 3rd day of the polling does not however, refer to any such objection. On the other hand it mentions that polling was peaceful at the booth. Ex. A/3 is another report by him regarding the second day of polling wherein also it is mentioned that there was no trouble and that the polling was peaceful. There is, however, no report on record regarding the fourth and the last day of polling. P.W. 56 is the Returning Officer, and he also does not support the evidence of P.W. 5. He did not remember if the Presiding Officer had written to him to discount the votes of Salamchak. He remembered that Fida Hussain had made some oral complaint to him at the time of counting, but he did not remember the details

thereof nor did he remember to have referred him to approach the Chief Electoral Officer, Bihar, P.W. 63 who was, during the election, posted to Jahanabad thana and who had occasion to go to Kako booth, does not also support the evidence of the witness on the point. He did not remember about any objection having been raised regarding Salamchak voters. According to him, persons whose names were not found in the voters list, used to be removed from the booth and voters were allowed to enter the inner enclosure one by one and as such there was hardly any case of voting by improper identification or false personation.

14. P.W. 48, Md. Abdul Hai of Kako comes as another polling agent of the petitioner at Kako, but the fact of his having acted as such is also challenged by the respondent and there is no reliable evidence to support his evidence. He also states to have raised objection before the Presiding Officer that residents of Salamchak were not in the voters list and the Presiding Officer had promised that the votes recorded would be discounted. According to him serial Nos. 3440 to 3528 were the voters who, although they were not voters and belonged to Salamchak, had passed as voters of Satanpur. It is significant that he does not name P.W. 5 as his co-worker nor does P.W. 5 name him as a polling agent and having raised the said objection. He could not give any reason why any resident of Salamchak, though atleast 50 to 60 of them were qualified to be voters, were not recorded in the voters list. He named some residents of Salamchak, but none of them has been examined to support him. Similarly he stated that one Dharam Singh of Satanpur could not vote on the ground that his vote had already been recorded, but the man himself is not examined to support him. He is stated to have challenged the identity of only one voter of Salamchak, but there was no written petition filed on the irregularities mentioned by him. Similarly, he has also named Balgovind Gope and others as residents of Salamchak who were recorded in the voters list of Satanpur. Thus his evidence goes to support the evidence of the respondent that there was mistake in the voters list regarding the name of the village. The possibility of minor mistakes having crept in the voters list also finds support from the evidence of P.W. 5 whose name, instead of Badri Narain Singh, was recorded as Badri Singh under serial No. 272 of the voters list of village Babhana (Ext. B).

15. The next witness Bisheshwar Lal (P.W. 52) of Kako also comes as another polling agent of the petitioner. He supports P.W. 48 that he had raised objection. According to him no inhabitant of Salamchak was a voter, but he was unable to give the name of any one of them who are said to have cast their votes as voters of Satanpur. He said that Salamchak and Satanpur are situated at a distance of little more than half a mile from each other. P.W. 53 Govind Prasad of Kako is also examined as a polling agent of the petitioner. He, like P.W. 52, did not himself raise any objection but says that Abdul Hai (P.W. 48) had done so. He himself had never visited any of the two tolas concerned nor does he remember the name of any person of Salamchak who had cast his vote.

16. The only other witness on the side of the petitioner on the point is a Postal Clerk (P.W. 66), who came to say about one telephonic call booked from Jahanabad to Patna, Phone No. 3956, to the Chief Electoral Officer, Bihar, but on 20th January 1952. He could not say who had booked the call and for what purpose. He was also referred to the register called Receipt Book wherein Rs. 1-4-0 had been collected for the aforesaid call, but it does not show the name of the person from whom this amount had been collected. His evidence also is not only incomplete but cannot also support in any manner the case of the petitioner because the petitioner's case and evidence is that he had telephoned immediately after the counting was finished i.e., on 28th January 1952. Therefore, the telephonic call deposed to by the clerk cannot relate to this matter.

17. Lastly, we are to refer to order sheet (Ex. 4) of the Returning Officer. Order dated 28th January 1952 therein relates to the time of counting. It appears that Fida Hussain had filed a petition, although he himself does not say so, that the votes of village Salamchak may be declared invalid, as the voters were not included in the electoral roll and they had exercised their franchise as residents of village Satanpur. On this a report was called for from the Presiding Officer Mr. V. N. Singh, Supply Inspector (P.W. 65) and on perusal of the same no irregularity was found and hence the petition was filed. The report, however, is not on record.

18. After having discussed the evidence on the side of the petitioner, we now take up the evidence on the side of the respondent. Referring to Ext. B, the finally published Electoral Roll, we find that under village Kako, No. 464, tola Satanpur is found mentioned at 2 places, one at page 1317 bearing serial No. 3433 to 3550 and another at page 1369 having serial Nos. 240 to 516. Unquestionably there is only one Satanpur and it is quite reasonably argued that one

Satanpur is a mistake for Salamchak. To prove this have been examined R.Ws. 14 and 38, the respondent himself. R.W. 14 is a Homeopathic Practitioner at Kako and as such he knows the two hamlets Salamchak and Satanpur as also the residents of these two tolas. He perused the electoral roll (Ext. B) and said that the persons named against serial Nos. 3433 to 3550 commencing at page 1317 are residents of the tola Salamchak and most of them are known to him. He avers, therefore, that Satanpur printed just above serial No. 3433 in Ext. B is a mistake for tola Salamchak. According to him the correct Satanpur is the one at page 1369 of the electoral roll (Ext. B) bearing serial Nos. 240 to 516, as mentioned above. He knows them and states that they are the real residents of tola Satanpur. He further adds that he knows Bhirgu Tewari of Salamchak. According to him, there is no Brahmin or Tewari resident in tola Satanpur. His evidence about Bhirgu Tewari is also supported by the petitioner's witnesses Nos. 52 and 55. According to them Bhirgu Tewari is of Salamchak but he is found enrolled under serial No. 3498 under Satanpur. Thus it is manifest that tola Satanpur bearing serial No. 3433 and onwards is a mistake for Salamchak and probably it was on this consideration that the objection, as mentioned in the Ordersheet (Ext. 4) could not succeed. We have already mentioned that minor mistakes had crept in the electoral roll and Rule 23(3) of the Representation of People Act, 1951 clearly meets the case of such clerical mistake. The Presiding Officer (P.W. 65) has rightly said that all his decisions about allowing the voters to cast their votes were made by him keeping in view the said Rule.

19. The evidence of the respondent (R.W. 39) also supports the statement that tola Satanpur at page 1317 of the electoral roll (Ext. B) is a mistake for tola Salamchak. Besides, the said mistake is further supported by P.Ws. 52 and 55 when they stated that there were 100 to 150 residents of Salamchak and 200 to 250 residents of Satanpur. These numbers are substantially supported by the serial numbers of voters mentioned above in the electoral roll.

20. It is already mentioned that rule 23 assumes that there may be clerical or printing errors in the electoral roll and lays down that such errors will not affect the right of a person to obtain a ballot paper. If it is established, as we have held that it is, that Satanpur is a mistake for Salamchak, then clearly there has been no irregularity in receiving the votes of these electors.

21. Mr. Verma's second contention that these persons being recorded electors have a right to vote under section 62 of the Representation of People Act, 1951, is also correct. The right of these electors to vote in this constituency is directly in question and the fact that they were recorded as electors, gives them a right to vote although they may, in fact, be inhabitants of Salamchak and not of Satanpur, as shown in the electoral roll. Moreover, in our opinion, the petitioner's contention has no legal basis at all. He says that the persons entered against serial numbers 3433 to 3550 as inhabitants of Satanpur have no right to vote as they are inhabitants of Salamchak. It is not denied that these persons are residents within the territorial limits of the Jahanabad constituency, nor is it denied that they are qualified to be electors. A person recorded as an elector has a vote by virtue of his being so recorded and not as inhabitant of a particular locality within the constituency. Therefore, whether they belong to Satanpur or to Salamchak, they have validly exercised their votes as recorded electors. The point, therefore, is decided against the petitioner.

22. Conceding for a moment that there had been such irregularity, the result could not have been materially affected on this ground. We may refer to the marked Electoral Roll (Ext. 1/1) relating to Salamchak and Ext. 1/2 to Satanpur. Only 35 votes of Salamchak purport to have been polled and as such it cannot be said to have materially affected the result of election, because unquestionably there is difference of 538 votes between respondent No. 1 and the petitioner as disclosed in para. 8 of the petition.

(b) Kako

23. The case of the petitioner in substance as disclosed in para. 16 of the petition and para. 7 of Schedule III is that at Kako booth on 18th January, 1952 i.e. the fourth and the last day of the polling, voters up to serial No. 3528 only were to poll their votes according to the final programme as given in Ext. 7, but the Presiding Officer recorded votes beyond that number. On objection being taken, the Presiding Officer said that he had informed the Returning Officer not to count votes beyond serial No. 3528 but this was not done by the Returning Officer. Hence the irregularity.

24. In support of the above allegation P.Ws. 5, 48, 56, 65 and 75 have been examined. P.W. 5 is the same Badri Narain Singh who comes to say that polling

was held at Kako booth for four days and that on the last date polling had gone up to serial No. 3538 or 3540 and when he pointed out that votes up to 3528 only had to be recorded, the Presiding Officer admitted the mistake and said that he was informing the Returning Officer to exclude votes beyond 3528, but the Returning Officer did not do so. His evidence is, however, not borne out by the marked electoral roll marked Z1 for identification and discussed below. He, however, admits that the number of voters at Kako were more than 3528 but voters beyond 3528 had to vote nowhere. The legal aspect of this matter will be discussed hereafter. But it is significant that objection as well as reply by the Presiding Officer as also the Returning Officer was oral. P.W. 48 Syed Abdul Hai, the merit of whose evidence we have just mentioned above, has supported substantially P.W. 5 on reference to a chit of paper which he characterised as a note having been prepared by him at the booth at the time of polling. The paper marked 'X' for identification, was produced by him uncalled for. Unlike P.W. 5, he discovered the mistake and objected after serial No. 3548 had passed and the polling thereafter was stopped. P.W. 56, the Returning Officer does not support the evidence of the above witnesses on the point as he did not remember any fact. P.W. 65 who is the Presiding Officer, was at first unable to say if votes beyond serial No. 3528 had been polled on 18th January, 1952. Certain electoral roll, marked 'Z' for identification, was shown to him wherein the word 'end' is found written at the bottom of the page ending with serial No. 3528, and on the other side of the leaf "No need" is found written after having bracketed serial Nos. 3529 to 3539 and 3540 to 3550. There are cuttings of certain serial numbers with red pencil also. But nothing could be elicited. When marked electoral roll, marked Z/1 for identification, was shown to the witness and questioned if any vote beyond serial No. 3538 had been polled on 18th January, 1952, the witness at first could not say because the electoral rolls were marked by the Polling Officers. The witness was further followed by questions but he could not give any definite answer on the point nor could he say as to who had written the letters "N.D." or "The end" and "No need". In this electoral roll at the bottom of the page ending with serial No. 3528 it is found written "Fourth day last number", but in cross-examination he stated that ballot paper number is to be noted down against the name of the voter in the list whenever he was given ballot paper. No ballot paper number is found given in the electoral roll marked Z but ballot paper numbers are noted against some voters in the document marked Z/1. He also stated that no ballot paper appeared to have been issued after serial No. 3425 on reference to Z/1 and he meant further to say that no ballot paper was issued after serial Nos. 3529 to 3550. Accordingly this witness negatives the case of the petitioner that polling continued till serial No. 3438 or 3440 or up to serial No. 3548, but it is found from Z/1 that certain numbers were written against serial Nos. 3444, 3445, 3446 and 3448, though they have been penned through. In re-examination the above fact has been taken, but on further cross-examination the witness stated that by mistake the ballot paper numbers were put down and were subsequently cancelled when the mistakes were discovered.

25. After having thus considered the evidence, the only other witness is the petitioner himself (P.W. 75) who states to have telephonic talk with the Chief Electoral Officer, Bihar. He names P.W. 5 also as present but he, as already mentioned, does not support him on the point. The petitioner admitted that no written objection was filed and the receipt for the telephonic charge is also said to have been lost and it is already mentioned that the evidence of telephonic talk may not relate to any such objection.

26. Coming now to the legal aspect of the matter we find in Ex. 7 that Kako polling station was divided into 4 booths in which pollings were to take place on four days, the number of voters according to their serial numbers to be allowed to enter the booth for voting on each day being shown in brackets. 18th January, 1952 was the last date for polling in Kako. It is obvious that an order of the Returning Officer could not validly exclude voters bearing serial numbers 3529 to 3550. It is, therefore, urged by Mr. Verma that the figure 3528 in Ex. 7 is a printing mistake. However that may be, there can be no doubt that under the law the voters bearing serial Nos. 3529 to 3550 were entitled to vote. If their votes have been received, they have been validly received notwithstanding the allocation of the voters. Although a good deal of evidence has been adduced, the petitioner could not seriously contend that there has been improper reception of these votes within the meaning of section 100(2)(c) by allowing these voters to cast their votes. The petitioner's allegation, therefore, is without any merit.

27. To sum up, therefore, the petitioner cannot be held to have succeeded on the point either in law or on facts. Besides, even if it be conceded for a moment

that ballot papers were issued to four of the voters Nos. 3544 to 3546 and 3548, the mistake or the alleged irregularity, if any, cannot be deemed to have materially affected the result of the election, because, as already mentioned, difference between the votes secured by the returned candidate and the petitioner is considerably large.

(c) *Nisarpura*

28. The case of the petitioner, so far as this hamlet Nisarpura is concerned, is mentioned in para. 14 of the petition coupled with paras. 4 and 5 of Schedule III. The allegations in substance are that Nisarpura is a hamlet of village Bara under revenue thana Jahanabad No. 610, but it was and is still within police station Makhdumpur and not within police station Jahanabad. According to the orders promulgated by the President of India under section 9 of the Representation of People Act, 1950, Nisarpura should have been within Ghosi constituency and not in Jahanabad constituency, but the Returning Officer, as late as on 17th January, 1952 i.e. the day of the polling, ordered that the voters of this village should vote at Barhauna booth within Jahanabad constituency although these voters did not figure in the voters list, which was finally published and sold after correction, of Jahanabad constituency. Accordingly section 100(2)(c) of the Representation of People Act, 1951 having been violated, the election is void and there should be, fresh polling in Barhauna booth after excluding Nisarpura voters from this constituency.

29. The respondent, on the other hand, in paras. 13 and 20 of the written statement, has denied the allegations both in the petition and in the Schedule. He has contended that tola Nisarpura is not in Ghosi constituency and that it can be very well ascertained by looking into the corrected electoral roll of Jahanabad constituency as finally published.

30. Before we take up the considerations of the evidence on fact it seems necessary to give our finding on the point of law raised by Mr. Verma for the respondent. According to him this Tribunal is precluded from determining whether or not the votes of the inhabitants of Nisarpura were validly received at Barhauna booth, even if it is assumed that Nisarpura is outside Jahanabad police station and is a part of Makhdumpur police station. He has relied upon section 62 of the Act which says:—

"Right to vote—(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll or any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency, if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (XLIII of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force."

It will be seen that the section makes a distinction between persons debarred from voting and persons entitled to vote. As to the former, the bar is absolute, no matter what contravention of statute or statutory rules may have taken place in omitting the name of such voters from the electoral roll. In other words, if a person's name is not found in the electoral roll, he cannot exercise his franchise even if he is qualified under the law. With regard to the latter category, namely persons entitled to vote merely because they are recorded as electors, the exercise of the right is subject to the provisions of the Act. The specific right conferred on them is the right to cast their votes in a particular constituency, although in fact they may not be entitled to be recorded as a voter in the constituency. Generally speaking, this may happen for either of two reasons; firstly, a person not qualified under the law may be recorded as an elector; and secondly, a person, although qualified, is recorded in the wrong constituency. In either case section 62 entitles him to vote, in the constituency where he is recorded as an elector. Mr. Verma has relied upon several cases in which the right of a particular

person to vote was unsuccessfully questioned on the ground that the voter was not qualified. It is not necessary, therefore, to examine those cases. We have here a situation of a different kind. The allegation is that a large number of voters of an area assigned to another constituency have voted in the constituency with which we are concerned. If that is so, then there can be no doubt that in the conduct of the election there has been non-compliance with the provisions of an order made "under an Act relating to the election", which, if it materially affects the result of the election, entitles the Tribunal to set aside the election under section 100(2)(c). Section 62, in our opinion, assumes that the constituency, as shown in the electoral roll, is a constituency defined and delimited by the President. The true meaning of section 62 appears to be that if the constituency is properly constituted, then any voter recorded in it shall have a right to vote notwithstanding any infirmities that may attach to his franchise. Take an extreme case. The President defines under the law two constituencies—A and B—coterminous with two police stations 'X' and 'Y' respectively, but the inhabitants of a major part of police station 'X' are recorded as electors in constituency 'B'. Can it be said that the election in either constituency is not vitiated by reason of non-compliance of the President's order? Such a situation concerns the validity of the formation of the constituency itself rather than the right of an individual elector to exercise his franchise. In our opinion, therefore, the contention of Mr. Verma based on section 62 must fail.

31. Now coming to facts before discussing the merit of the oral evidence adduced by the parties, we would consider the documentary evidence on the point. On reference to the Delimitation of Parliamentary and Assembly Constituencies (Bihar) Order, 1951, the President in pursuance of sections 6 and 9 of the R.P. Act, 1950 (XLIII of 1950), has ordered the extent of the constituencies, both Parliamentary and Assembly. According to this, Jahanabad constituency consists of Jahanabad Police Station of Jahanabad Sub-division only. There are separate constituencies of Mukhdumpur and Ghosi. Similarly, Parliamentary constituencies have been described under Gaya East, Gaya North and Gaya West. Gaya North comprises Jahanabad Sub-division and Belganj and Tekari police station of Gaya Sadar Sub-division of Gaya District. Here we are concerned with Assembly constituency and it is pretty clear that the Jahanabad constituency with which we are concerned, was coterminous with the police station of Jahanabad as already mentioned and it has to be considered if Nisarpura within village Bara is under Jahanabad police station or Makhdumpur police station. The contention of the learned Counsel for the petitioner that there is no specific denial in the written statement by the respondent that Nisarpura is within Makhdumpur police station, the controversy should end there. But we are afraid this contention cannot prevail, because there is a clear denial that the village is in Ghosi constituency and there is also a clear assertion that it is within Jahanabad constituency and the matter is to be decided on the materials on record.

32. The respondent has produced Thana map of Jahanabad, marked Ex. K. It is true that this map is of revenue thana Jahanabad, but it shows boundaries of not only Jahanabad police station but also of Kurtha, Makhdumpur and Ghosi police stations. This map was published under authority of the Government in 1944 and is corrected up to 1954. According to the police station boundaries under it, village Bara No. 610 falls within Jahanabad police station though on three sides of it run the boundary lines of Mukhdumpur police station. As against this document, the petitioner could not file any other map of either Makhdumpur police station or Jahanabad police station to show that village Bara admittedly comprising hamlet Nisarpura is outside Jahanabad police station. As a matter of fact even in the petition as also in the evidence of the witnesses examined by the petitioner, the admitted position is that Bara is within Jahanabad police station. It is also admitted that Nisarpura, the tola in question, is a hamlet of village Bara. Under such circumstances, the burden is heavy on the petitioner to show that a part of village Bara, i.e. excluding hamlet Nisarpura, is under one police station while another part of it including Nisarpura lies within another police station. The petitioner could not produce any reliable documentary evidence on the point. At the time of argument the learned lawyer on his side produced the District Census Handbook of Gaya published in 1952 wherein Bara No. 610 having an area of 324 acres is shown not only within police station Jahanabad at page 222 but also under Makhdumpur police station at page 240. It is difficult to understand how the entire area of the same village could lie within two different police stations. It is true that the number of houses and the number of persons residing differ under the two Bara, but there is hardly any clear evidence that the one Bara relates to Nisarpura and the other Bara is exclusive of the said hamlet.

33. Another document produced at the time is a list of polling stations and polling areas of the House of People i.e. of Parliamentary constituency No. 6. In this document under Makhdumpur, Nisarpura 610 is shown within Supi L.P. School booth, but as already mentioned this document relating to the Parliamentary constituency of Gaya North is not clearly helpful specially in face of Ex. 7, the finally published booth list or list of polling stations and polling areas of Jahanabad constituency No. 27 with which we are concerned here. Under this, tola Nisarpura with village Bara is shown within Barhauna H.E. School booth. It is vehemently contended that tola Nisarpura is written in ink and as such a subsequent correction. The fact of mere correction in ink cannot, in absence of any cogent evidence cast any doubt on this document marked on the side of the petitioner himself. Besides, it is noticeable that this document bears various other corrections. The Returning Officer has been examined in this case as P.W. 56, but no question was put to him as to when and how this correction in particular was made. The certified copy of this document (Ex. J) taken by the respondent as early as in November, 1952 shows that tola Nasirpur is within Barhauna booth. The other document on the point is the finally published electoral roll (Ext. B). Together with this is to be read the marked electoral roll of Barhauna Ext. I. In these two documents no doubt at the top of the page police station Makhdumpur circle No. 6 is mentioned, but nevertheless it is included within Jahanabad constituency. The name of the police station might have been a misprint as the electoral roll has been found as above to contain some minor mistakes. It is said that the paging in Ext. B have suffered correction in consequence of the subsequent insertion of pages 1025 and 1026 and that its binding also appears to be suspicious in this regard. But all these conjectures and surmises cannot lead us to any sure conclusion, specially in view of the marked electoral roll (Ext. I). The petitioner says no doubt that the electoral roll purchased by him did not contain this hamlet Nisarpura under Barhauna booth, but that copy of electoral roll is not produced on the ground that they were torn booth-wise and given to his polling agents of the booths concerned. There is no reason why he did not recollect them to be produced here in support of his case. Moreover, his polling agent of Barhauna booth and who has been examined in this case as P.W. 1 could have at least produced the one allotted to him to show that tola Nisarpura was not within the booth. Under the circumstances, non-production of the document may reasonably lead to an adverse inference.

34. Having thus disposed of the documentary evidence, the oral evidence on the point consists of P.Ws. 1, 2, 3, 9, 21, 33, 44, 47, 56, 58, 62, 64 and 75, while on the other side have been examined R.Ws. 1, 15, 17, 33 and 38.

35. P.W. 1 Janeshwar Singh was polling agent of the petitioner at Barhauna. This fact has been admitted by R.W. 17. He is a member of the Congress Committee of Jahanabad. He does not also appear to be a truthful man in so far as he feigned inability to recollect of the thana of village Para, a fact which is admitted in the petition itself. He has come to speak on the point but he does not know whether the voters of Bara had polled at Barhauna booth. He quite incorrectly stated that Nisarpura was a village and not a hamlet. He states to have shown to the Presiding Officer his voters list to support his contention that Nisarpura was within Makhdumpur police station and outside Jahanabad constituency, but that copy of the voters list as already mentioned is not produced before us. Subsequently, in cross-examination this witness had to admit that he had not seen the finally published voters list of the Jahanabad constituency of the Bihar Legislative Assembly. Hence, his evidence dwindles into insignificance. Strangely enough he did not remember to have filed any petition of objection on this score before the Presiding Officer, but remembers that a petition like this had been filed by another polling agent whose name curiously he does not remember. He did not also challenge the Nisarpura voters by depositing the required fee. P.W. 2 Jamuna Sharma is of Bhelawar. He gives a different story that about hundred persons of Nisarpura had arrived at the booth clamouring and complaining that their votes were not being recorded although they had been told that they should come to Barhauna for the purpose, on the ground that their names did not find place in the list of voters appertaining to Barhauna booth. Brahmdeo Sharma (P.W. 3) said to be the polling agent of the petitioner, objected to their votes being recorded, but the Presiding Officer said that he had just received orders of the Returning Officer and, therefore, he would record their votes. Thus, his evidence of receiving the orders at the time of polling is neither countenanced by the previous witness (P.W. 2) nor by the Presiding Officer (P.W. 58) himself. According to him, Bara and Nisarpura are two different villages, a fact which is not supported by the petition itself. But he admits that Bara is under Jahanabad police station. Besides, the reliability of this witness is highly shaken when he, being a school teacher in an Upper Primary School under the District Board of Gaya, did not admit the admitted position that the

petitioner is a member of the said District Board. He did not give straight answer to the suggestion that he was really the polling agent of the petitioner at Hati booth. P.W. 3 Brahmdeo Sharma comes as a polling agent of the petitioner at the booth. But this has been disputed and there is no polling agent form to support him (*vide* Ext. 3 series). It is taken from him in cross-examination that before the polling there had been announcement regarding the time, the place and the jurisdiction of each constituency and also about the fact as to which village was to cast its vote at which booth. This announcement had been made on behalf of the State. Informations about the date and time of the polling and the jurisdiction of Barhauna booth had been hung up outside the booth itself. All these evidence go to support the evidence on the other side about the proclamation (*vide* evidence of R.Ws. 1 and 15). The two witnesses are positive in their assertion that the proclamation was made about Nisarpura being under Barhauna Booth, but there is no evidence on the side of the petitioner that the hamlet Nisarpura was to vote at Supi within Ghosi constituency. He states to have filed a written petition of objection before the Presiding Officer, but that petition, curiously enough is not brought on record, specially when the evidence is on the other side that no objection, either oral or written, was advanced by anyone at the time of the polling.

36. P.W. 9 Sahajdip Singh is of Bhelawar, to which village P.W. 2 also belongs. He also speaks about the Presiding Officer having said, on the objection raised, that he had received orders from the Returning Officer. The Returning Officer (P.W. 56) also has not supported to have issued any such order. This witness has come unsummoned to depose and he conceded that he had come to Arrah in connection with this case because he was interested. His brother is a School teacher under the control of the District Board, of which the petitioner is a member. Although he glibly stated in his examination-in-chief that Supi under Ghosi constituency was the booth of Nisarpura, but in cross-examination he had to concede that he had not seen the list of Ghosi constituency. He admits, unlike P.W. 1, that voters of Bara had to poll their votes at Barhauna booth. His brother Chandradip Singh is P.W. 33. He cannot be regarded as an independent witness. He states that Nisarpura people were not in the voters list of Barhauna booth, but the list itself as already mentioned is not produced to support it. He states that Sakal Babu and Janeshwar Babu had filed petition of objection before the Presiding Officer, but does not name Brahmdeo (P.W. 3). Sakal Singh, however, has not been examined on the point while Janeshwar (P.W. 1), as already mentioned, does not remember to have filed any such petition. P.W. 21 Pargas Singh poses as a dafadar on duty at Barhauna booth. He comes to depose on getting dasti summons and not through proper channel. No written order of his deputation at Barhauna, outside his circle, is produced. According to him, Nisarpura voters were allowed to cast their votes without deciding the matter. He does not appear to be a reliable witness and has hardly proved the point on which he has been examined. P.W. 44 is a co-villager of P.Ws. 2, 9 and 33, being of village Bhelawar. He comes to depose as polling agent of respondent Kedar Nath Shandilya. The fact of his being a polling agent is disputed and the polling agent form (Ext. 3 series) does not support him. He comes to depose almost unsummoned, because he states to have received dasti summons in the court premises on the day he deposed. He admits proclamation in villages, but he falsely estimated that a little less than hundred men of Nisarpura had cast their votes at Barhauna as against Ext. I, according to which only 44 men had voted.

37. The next witness Ram Nandan Singh (P.W. 47) is also of Bhelawar. He made a confused statement about polling agent and Polling Officers. He did not know which village was attached to which booth. Hence his evidence comes to nothing.

38. P.W. 56, as already mentioned, is the Returning Officer, and he does not remember hamlet Nisarpura. No further question was put to him on this point. P.W. 58, the Sub Registrar of Jahanabad, was the Presiding Officer at the booth as already mentioned. He says that there was some confusion about some tola but he did not remember its name. So far as he could remember, he did not receive any order of the Returning Officer regarding that tola that day. He thought to have received a complaint in writing, but he allowed the voters to record their votes as they were in his voters list. It is further taken from him that there was adequate arrangement for identification and voters were allowed to cast votes after proper identification to his satisfaction. No vote was challenged in writing at Barhauna booth. He is known to the petitioner from before. P.W. 62 Ramdeo Singh was a police officer on duty at several booths including Barhauna. He simply says that there was some *gar-bar* near Barhauna booth, but he did not remember about its nature or details. Hence his evidence comes to nothing. Besides, he had no duplicate copy of the 'Khariat report'

regarding Barhauna booth with him as he had some 'Khariat reports' of other booths. P.W. 64 Sheolal Singh of Supi comes as a Sur Punch of Circle No. 6 of Makhdumpur thana. Nisarpura is a tola of village Bara but according to him it is within the jurisdiction of Makhdumpur police station. He states to have realised chawkidari taxes from that tola and prepared voters list of the entire circle No. 6 within Supi booth. Consequently, he states to have prepared the voters list of Nisarpura also, but he had to concede that the voters of Nisarpura had not gone to Supi booth to cast their votes. In answer to a court question, he stated that the booth of Nisarpura was Supi, not Barhauna. In cross-examination, however, he stated that he had not seen the booth list of Jahanabad and Makhdumpur constituencies. According to him also Bara is in Jahanabad thana. He admitted that voters of Nisarpura had gone to cast their votes at Barhauna booth. Hence his evidence materially supports the evidence of proclamation adduced on the side of the respondent for otherwise voters of the village must not in the first instance have gone to vote at Barhauna booth. Besides, he had not seen the voters list of Ghosi constituency nor the booth list of that constituency. Therefore, although a Surpanch, he has proved himself to be an incompetent witness on the point. The only other witness is P.W. 75, the petitioner himself. As already mentioned he has not produced the voters list of Jahanabad constituency wherein he did not find Nisarpura. He did not file any objection in writing before any authority. Ext. 4, the order-sheet, also does not show if any such objection was raised at all. It cannot escape notice that the petitioner failed to examine any voter of Nisarpura to support his case of subsequent abrupt change of polling booth. P.W. 33 has named one Chhedl Mahto as a voter of Nisarpura, but he also has not been examined. Hence, the oral evidence fails decidedly short of the mark to prove as a fact that Nisarpura was outside Jahanabad constituency and that there was an abrupt change on the day of the polling to his prejudice.

39. I have already mentioned the evidence of R.Ws. 1 and 15 regarding proclamation in villages. R.W. 1 was the Polling agent of respondent No. 4, Thaneshwar Prasad Singh, at Barhauna. This is supported by the polling agent form (Ext. 3/Z144). Hence, he is competent to depose on the point. R.W. 15 was the polling agent of the respondent and as such interested but he had worked in Barhauna booth areas also, though not as polling agent there. He joined with R.W. 1 in saying that there was no objection raised on this score at the time of polling. R.W. 17 was the polling agent of the petitioner at Barhauna. He says that there was no objection and that Nisarpura was not included in the voters list under Barhauna. R.W. 33 is a man of Barhauna, the neighbouring village of Nisarpura, and helper of Md. Ishaque. He has got land at Nisarpura. He had personally seen the voters list for he was issuing slips to voters. Hence he is competent to depose on the point. R.W. 34 was the polling agent of the respondent at Maniama (Ext. 3/Z38). He said nothing in his examination-in-chief on the point under consideration, but in cross-examination it was taken from him that he knew one or two persons of Nisarpura, one being Sahdeo Gope who had cast his vote at Barhauna. R.W. 38 is the respondent himself and he has pleaded his oath to say that Nisarpura was under Barhauna booth and was included in the voters list of Jahanabad.

40. On considerations of the oral and documentary evidence, therefore, we feel bound to hold that the petitioner has failed to prove that Nisarpura was outside Jahanabad constituency and that the voters of that place had wrongly exercised their franchise at Barhauna within Jahanabad Legislative Assembly constituency.

41. We are also of the view that even if it be conceded that there was any improper reception of votes as alleged, the result of election has not been materially affected and as such section 100(2)(c) of the R. P. Act cannot come into play. As already mentioned there were only 44 votes pertaining to village Nisarpura recorded and the difference of votes polled by the returned candidate, namely the respondent, and by the petitioner, is 538 as already mentioned.

42. In conclusion, therefore, we hold that there was no improper reception of vote, and even if it were found that there had been any such reception, that could not have affected the result of this election materially.

Part II

43. We now take up the second part of the issues. It relates to two of the booths (a) Kenari and (b) Bistol. It has been alleged by the petitioner that the Presiding Officer of Kenari booth had not come to the booth up till 3 p.m. on 17th January, 1952, one of the polling dates and in his absence the polling officer

did not allow several voters to cast their votes inspite of having been approached for this purpose, with the result that a large number of voters went away without recording their votes.

44. As regards Bistol booth, it is said that one Kailash Singh a congress worker, was arrested without any rhyme or reason at about 3-30 P.M., with the result that on that day about 100 or 150 voters of several villages left the booth without recording their votes and on the next day voters of several other villages did not come to vote because panic prevailed on account of that arrest.

45. We will take up each of these points separately.

(a) *Kenari Booth.*

46. There is no concise statement about it in the petition. On the point in respect of this booth the following witnesses have been examined by the petitioner, namely P.Ws. 7, 26, 27, 28, 56, 57, 59, 61, 68, 72. On behalf of the respondent the allegations have been denied and three witnesses have been examined including the respondent. They are R.Ws. 21, 25 and 38 and two documents have been relied upon which are Exts. A and A/1, the reports of the Presiding Officer of Kenari Booth.

47. P.W. 7 Kailash Singh says that Mathura Babu, Presiding Officer, had not arrived at Kako booth till 3 P.M. and he had made complaint of this fact to Dwarka Babu, Sub-Inspector of Police, who left for Jahanabad and ultimately Mathura Babu came at 3 P.M. Dwarka Babu P.W. 61 does not support him as he has no recollection independent of his report, if any. P.W. 56 is the Returning Officer. He also does not say anything on this point. P.W. 57, a Deputy Magistrate, who was incharge of armed forces and used to go about to tour the election areas, has also not been able to tell us anything, because he does not remember any fact. So is the case with P.W. 59, A.S.I. of Police, who was posted at Jahanabad during the election period and was incharge of Police force. So also is the case with P.W. 68 who was incharge of armed forces. He also does not remember anything about Kenari booth. It appears, however, from his evidence that he used to send tour diary reports which may be available from the office of the Collectorate Gaya. He does not remember if any incident had happened anywhere during the election.

48. It appears to us that the learned advocate for the respondent has rightly urged that if really such a gross breach of duty on the part of the Presiding Officer had taken place, it must have come to the notice of these officers and they were expected to have remembered this fact. So, the position is that these officers who were expected to know and remember these facts, did not remember it. This is very strong circumstance to hold that the case of the petitioner on this point is not worth reliance. We find considerable force in this argument.

49. Then we have got the two reports of the Presiding Officer (Exts. A and A/1), which show that the polling at both the places had passed off peacefully. Moreover, the evidence of Kailash Singh (P.W. 7) itself contains facts which disprove this case of the petitioner. At one place in his evidence it has come out that the polling of the votes had started at 8 A.M. and had lasted till 4 P.M. This shows two things, firstly that the whole case of the absence of the Presiding Officer from the booth and the suspension of the voting during that period, is incorrect and secondly that even if really the Presiding Officer was absent for some reason, in his absence the polling officer had been authorised to record the votes and voting had been done. The position cannot be controverted that in law the Presiding Officer should not necessarily remain present physically at the booth. In certain circumstances he can remain absent. This is clear from section 28(3) of R.P. Act, 1951. Therefore, mere absence of the Presiding Officer by itself did not affect the matter unless it was proved that there had been suspension of the voting, which does not appear to have taken place as admitted by Kailash Singh himself. P.W. 26 has said that some female voters had come but they could not cast their votes because the Presiding Officer was absent, but he cannot be believed because he said that the polling had begun at 3 P.M. This is directly against the evidence of Kailash Singh who says that the polling had started at 8 A.M. Moreover, this witness (P.W. 7) himself has admitted that the polling officer was present, and used to look after the work of the booth. This proves that even if the Presiding Officer was absent, polling was going on. The evidence of P.W. 27 also shows the same fact. He admits that he had previously gone to record his vote but his vote had not been recorded because of certain objections raised by some body and when the Presiding Officer came, he approached him but he also decided after enquiry that this witness was not entitled to record his vote. So is the case with P.W. 28 who

has admitted that he was given ballot paper by the clerk who was working at the polling booth. This means that the voting was going on. P.W. 72 is a witness of village Jamuk who has come to prove that some female voters of his village had come but they could not vote because they wanted that some arrangement should be made for their identification by a lady inside the polling compartment and as this was not done, they could not cast their votes. He has also said that the Presiding Officer was not present. He has, however, admitted in his evidence that there were 2 or 3 government servants present at the booth and he had learnt from the clerks that the Presiding Officer had not come. He had no personal knowledge on the point. He has also admitted that the voting was going on at the booth. His evidence therefore, instead of proving the case of the petitioner, goes against it.

50. As regards the R.Ws., it does not seem necessary for us to discuss, in the circumstances, their evidence. Suffice it to say that they have denied this allegation and have said that polling was going on and the Presiding Officer was present. In the circumstances, we believe them and hold that the charge in question has not been substantiated.

(b) Bistol Booth.

51. We now take up the allegations regarding Bistol Booth. On this point the petitioner has examined P.Ws. 7, 8, 13 to 17, 25, 56, 59 and 75. On behalf of the respondent the allegations have been denied and he has examined himself (R.W. 38) and four other witnesses, namely R.Ws. 24, 26, 27, 37. There is, however, no specific denial in the written statement of the arrest of Kailash Singh.

52. Before we discuss the evidence of the witnesses, we would refer to the arguments of the learned advocate for the respondent that there was no illegality in the arrest of any person if canvassing was done by him within the prohibited area and if as a result of such a single arrest any panic had occurred, deterring some of the voters from coming to the booths to cast their votes, the respondent could not be held responsible for it. We agree to this contention.

53. Now coming to the evidence, we find that P.W. 7 Kailash Singh has admitted that he did not file any petition of protest against his arrest. At first he did not remember the name of any of the voters who had run away as a result of his arrest. Then he named four, namely Sarangi, Jagdeo, Jatan and Ugrah. Barring Sarangi Dusadh (P.W. 13) none of them has been examined in this case. P.W. 8 is a thoroughly interested person. He is a vaccinator under the District Board of Gaya, of which the petitioner is admittedly a member. According to this witness, Kailash Singh had been arrested about 100 bances away from the enclosure of the booth, which would mean about 300 yards away from the booth, but P.W. 7 has himself stated that he had been arrested at a place 25 to 30 Bances away from the booth's fencing. He did not identify any voter. He admitted the fact that the petitioner was a member of the District Board of Gaya. P.W. 14 has not denied the suggestion that Kailash Singh had been arrested because the allegation against him was that he had indulged in canvassing within the enclosure. This supports the argument of the learned advocate for the respondent that even if the contention of the arrest be correct, that would not go in favour of the petitioner if this arrest had been made for illegal canvassing which was an electoral offence. P.W. 15 is not a competent witness, because he admits that he had learnt in the way that two persons had been arrested, namely Kailash Singh and Jag Singh. There is no mention of the fact that Jag Singh had also been arrested, in the petition or in the list of particulars. Only Kailash Singh has been mentioned there. The evidence of P.W. 16 must be rejected because he stated that before the date on which he came to depose before us, he had not told anybody that he had run away from the booth without having cast his vote as a result of the panic. From the evidence of P.W. 17 Jagannarain Singh, it appears that he and Kailash Singh had asked the voters to vote within the prohibited area, because he stated that he had proceeded some distance from the polling compartment of the booth when he had called his villagers to hurry up for voting. The most damaging evidence in the case against the petitioner is that of P.W. 25 who has admitted that Kailash Singh was arrested on the allegation that he had canvassed within the booth area. P.W. 59 Deolochan Singh who was in charge of the Police Party has said that he could not say anything about the arrest of any person at Bistol without looking into the papers. No attempt has been made on behalf of the petitioner to call for any such record. P.W. 75, the petitioner, has said that he had complained to the Subdivisional Officer, at his bungalow at Jahanabad about the arrest, but P.W. 56 who is the S.D.O., has not said anything on this point. He says that he does not remember if Shayam Narain Singh, the polling agent of the petitioner, had complained in writing to

him against the conduct of the Presiding Officer of Bistol Booth. He also does not remember if he had approached him at his residence in connection with that booth. The evidence of this witness shows that he remembers the fact that Fida Hussain had made some oral complaint to him at the time of the counting of the votes though he does not remember the details thereof. It seems to us, therefore, that if really any complaint would have been made on this point which is under discussion just now by us, to the S.D.O. (P.W. 56) either by the petitioner himself or by Shyam Narain Singh, his polling agent, it is expected that this witness would have at least had a recollection of this fact though he might not have recollected the details thereof. We are satisfied, therefore, that this allegation of the petitioner is not correct.

54. R.W. 38 has denied this fact. R.W. 24 had worked for one of the respondents Shandilya at Bistol booth and he stated that nobody had been arrested at Bistol, and that there had been no panic. Nothing appears to have been elicited from him. R.W. 26 was a polling agent of the petitioner and he remained present at the booth on both the dates and he was sitting just near the place where the Presiding Officer had his seat. He has also proved that nobody had been arrested and no voter had fled away. We see no reason to disbelieve this witness. R.W. 27 Rambali Singh was a voter of Bistol. He says that he cast his vote and no arrest had been made at Bistol booth. Of course, he did not visit the booth on the second day and had come to the booth on the first day at 2-30 p.m. Nevertheless, if really a panic had prevailed, that could not have been a matter which could have remained hidden from an inhabitant of the village and, therefore, he could have certainly come to know of it. R.W. 37 is also another voter of Ramdeochoak within Bistol. He said that he had gone to the booth at 3 p.m. and remained there till 4-30 p.m. and that no voter of any place including this village had run away. He had gone to the booth on the first day. It may be mentioned that village Ramdeochoak is one of the villages mentioned in the list of particulars. The last witness is R.W. 38, the respondent himself. He denied this allegation.

55. It is significant to find that out of the witnesses examined by the petitioner only one witness is of Bistol, namely P.W. 25. The other witnesses are of other village than those mentioned in the list of particulars as the villages, the voters of which had been affected by the arrest of Kailash Singh and the consequent panic. We have already mentioned above that according to P.W. 7 one of the voters who had fled away was Sarangi Dusadh. Now, this Sarangi Dusadh is P.W. 13. He has not said anything on this point although he has spoken of other matters about Bistol. He says that he had cast his vote.

56. We are of the view, on consideration of the evidence, that these charges are not true.

Issue No. 15.—

57. It is alleged in para 17 of the petition that a number of ballot boxes of the petitioner were seriously tampered after the close of the poll and opening of the ballot boxes by the Returning Officer and as such the result of election was materially affected. In para 7 of Schedule III the tampering is described as—"Seal papers of a number of ballot boxes were without any signature of the Presiding Officer or of the agent of the appellant, which clearly meant that the boxes were opened and ballot papers tampered". The respondent, on the other hand, has made a general denial under paras 17 and 20 of his written statement.

58. There is hardly any independent evidence on the alleged tampering of ballot boxes. The only witnesses who have deposed on the point are P.Ws. 5 and 75. Both of them, it is needless to mention, are highly and directly interested. Besides, on reference to the ordersheet (Ext. 4) it is found that both of them were present at the time of the counting, but no such objection was raised at the time. On the other hand, the ordersheet records that—"the ballot boxes after being shown to me (the Returning Officer) and the candidates present or their counting agents, were opened by one Babu Ramanuj Singh". None of the witnesses have deposed that there were paper seals used and they were actually signed by the Presiding Officer or the polling agent. Other candidates have been examined in the case P.Ws. 18 and 67, but they are conspicuously silent on this point.

59. Under section 58 of the Act, if a ballot box is in any way tampered with, the election at the particular polling booth at which the box had been used is void and, fresh poll at that booth has to be taken. Under Rule 46 (iv) if at the time of the counting the Returning Officer is satisfied that any box has been tampered with, he shall stop the counting and adopt the procedure laid down

under section 58. We have the solitary statement of the petitioner himself (P.W. 75) that he had placed this fact before the Returning Officer. The Returning Officer himself, who is P.W. 56, has not been asked anything about this. We are satisfied that there is no evidence of tampering and that the particular allegation made by the petitioner does not amount also to tampering.

Issues Nos. 7, 13 and 18..

60. We will take up these issues together for the sake of convenience and also because the questions involved in them are common.

61. As already stated above, one of the corrupt practices alleged is that there had been violence in the shape of riot and assault at three booths, namely Maniama, Hati and Chanpura. In the election petition it has been alleged that at Maniama the people of Maniama had prevented the petitioner's voters of Maniama Rasulpur and Mohamadpur from recording their votes. A list of about 140 persons has been attached with the schedule who were thus prevented from recording their votes.

62. At Hati the allegation is that the petitioner's voters of Dakshni and Derhsaiya had been similarly prevented by respondent's violence and a list of about 80 persons is given and as regards Chanpura it is alleged that on both dates of polling the petitioner's voters had been assaulted by respondent No. 1's men and about 150 voters were prevented from voting. Names of 52 voters of villages Chanpura, Karaita and Palupur have been given in the schedule.

63. We propose to take up the evidence in respect of these occurrences separately.

64. We have considered the evidence adduced by the petitioner as against respondent No. 1 who has contested this petition and after a very careful consideration we have come to the conclusion that the petitioner has failed to prove the allegations mentioned above.

65. We now proceed to give our reasons separately in respect of each of the occurrences.

Maniama

66. In this connection the evidence consists of the statements on oath of P.Ws. 1, 4, 11, 12, 21, 41, 42, 49, 56, 58, 61, 62, 68 and 75. On behalf of the respondent, four witnesses have been examined, namely R.Ws. 15, 32, 34 and 38. Out of these witnesses, P.W. 75 is the petitioner himself and R.W. 38 is respondent No. 1.

67. Before we discuss the evidence of these witnesses we would like to refer to some of the important facts and circumstances going against the case of the petitioner.

68. It appears from the evidence on the side of the petitioner that there had been occurrence at or near Maniama booth as alleged by the petitioner. A petition of complaint had been filed in writing by one Sakal Singh who was said to have been the polling agent of the petitioner at that booth. It is significant to find that that petition has not been even called for by the petitioner from the authority before whom it had been filed, nor has Sakal Singh been examined.

69. Secondly, it also appears from the evidence that a proceeding under section 107 Cr. P.C. had been drawn up by P.W. 61, the Inspector of Police, who was then the A.S.I. of Police at Jahanabad, in connection with this occurrence, but nothing appears to have been done by the petitioner to call for the record of that case and so far as P.W. 61 is concerned, he has said nothing on the point. He admitted that he had occasion to visit Maniama but said that he could not remember any occurrence at the booth independent of the report which he might have submitted. The evidence also shows that one voter, P.W. 4 Brihaspat Beldar, while coming to the booth, had been subjected to assault. He had been sent to Jahanabad hospital and a case had been started in connection with that assault on him. But again there is no document in the shape of the record of the case or its judgment, to prove that actually Brihaspat Beldar had been assaulted in an occurrence which had taken place on the date in question at Maniama booth.

70. Thirdly, according to Brihaspat Beldar (P.W. 4), it appears that he had been sent to Jahanabad Hospital immediately after the occurrence. Again, neither the then doctor in charge of the Hospital, has been examined nor has any record been called for from the hospital to support this statement of Brihaspat Beldar.

71. It is thus clear that valuable documents which would have gone to clarify the matter very much in favour of this allegation of the petitioner, have not been brought before the Tribunal and there is no explanation of it on behalf of the petitioner.

72. Fourthly, P.W. 58 was the Presiding Officer of this Maniama booth and he has admitted that votings had passed off peacefully at his booth. No doubt this witness has said that he had received a complaint at Maniama from Sakal Singh which he had forwarded to the Returning Officer, who is P.W. 56, but he has not said anything on this point. Indeed, it appears that he has not been asked anything about it. On the other hand, he has said that as far as he remembered, the election in Jahanabad constituency had passed off peacefully. P.W. 58 Presiding Officer has admitted that he did not see any occurrence at the booth although the booth was open on three sides and one could see things up to a distance of 3 to 4 furlongs on all the three sides of the booth. He also did not remember the contents of the complaint of Sakal Babu. Consequently, it is clear that the evidence of this witness does not support that there had been any occurrence as alleged by the petitioner. On the contrary, his admission that the votings had passed off peacefully clearly negatives it. Similarly, P.W. 62, who was one of the members of the Military Police Force posted at Maniama and Hati, has admitted that in his Khairiat report regarding Maniama booth, he had mentioned that polling had passed peacefully. Though in the examination-in-chief, he said that a report had been received regarding a clash between Socialist and Communist parties about 1 mile away from the booth where he had gone and had found one Nonia with injuries on his person, yet obviously these statements cannot be believed in face of his own admission in cross-examination that in his Khairiat report he had said about peaceful polling. He has admitted in cross-examination that when he had come to court and was sitting in the court-room, he had been approached by P.W. 5 Badri Narain Singh who had told him something but he had paid no heed to his words. Obviously, this explains the attempt made by this witness originally to help the petitioner, but ultimately in cross-examination he has been constrained to accept the position of the peaceful voting at Maniama.

73. We now take up the discussion of the evidence of the witnesses. It is significant to find that only one person has been examined, namely P.W. 4, out of 140 persons, whose names have been given in the list of those who had been prevented by the riot from going to the booth and recording their votes. This is also a fact which goes against the case of the petitioner. There can be no two opinions that the most competent witnesses on the point would have been those persons. It is not clear why the petitioner has not been able to bring any person except Brihaspat Beldar out of them to prove the alleged riot.

74. Another significant thing which we find is that Raghunandan Singh is P.W. 12, but in the list of particulars we find that his wife Prema Devi was one of those persons who had fled away on account of the riot. This Prema Devi has not been examined, instead, her husband Raghunandan Singh has come forward to prove the fact, although his name does not find place in the list. Even he has not spoken about her.

75. Another fact is that Lachmi, wife of Brihaspat Beldar, is also mentioned in the list, but Brihaspat Beldar has not said that his wife was also going with him or that she was also one of those persons who had fled away as a result of the riot.

76. There are material contradictions in the evidence of the witnesses on important points, such as where the riot had taken place what its time was and how many persons had participated in it as assailants. For instance, according to Brihaspat Beldar P.W. 4, the most competent witness, being one of the persons who had been assaulted, there had been two occurrences, one at about 8 A.M. when he along with 200 persons had been chased away when they had reached a *bagicha* near Maniama booth. The second occurrence took place at about 10 A.M. when 200 voters including this witness were going with Sakal Babu and this time there had been assaulted in which he had received 4 injuries at a place north of Maniama booth. P.W. 11, however, says that the second occurrence took place at about 2 P.M. As regards the place of occurrence, it appears from the evidence of one witness, P.W. 41 Ramchandra Singh of Mohamadpur, that the assault had taken place about 100 bansas away from the polling booth. It is in evidence that one *bans* is equal to 6 cubits. But according to P.W. 62, a Police Officer, it ought to be 1 mile away from the booth and as I have already stated above, P.W. 58 Presiding Officer has said that up to 3 to 4 furlongs everything was visible from the booth itself and he says that he had not seen any occurrence.

77. The witnesses have also differed on the point as to the villages from where the voters were coming who had been subjected to rioting and assault. According to Brihaspat Beldar the voters were of Rasulpur, Mirjapur, Daulatpur and Lochana and they were 200 persons. According to Ramchandra Singh, the victims of the assault were of Beldari-bigha. P.W. 52 also says that voters of Rasulpur and Beldari-bigha had been assaulted. In the schedule it has been mentioned that the voters of Mohamadpur, Rasulpur and Maniama had been assaulted and had refrained from casting their votes. There are thus material contradictions on this vital point between the evidence and the pleading. The witnesses have also differed on the number of mob which had made the assault. One witness has said that they were 10 or 15, another said that they were 40 to 50, and so on. Brihaspat Beldar says that on the second occasion about 200 voters were going while P.W. 11 says that he was also a voter, but his name does not find place in the list of particulars as one of those who had also run away and had not cast his vote.

78. On the other hand, R.W. 15 Suresh Sharma was the polling agent of Respondent No. 1 at Maniama and he has stated that he was present throughout at Maniama booth and no occurrence had taken place. He is a man of Nonahi. R.W. 32 is an important witness inasmuch as it is proved beyond any doubt that he was the polling agent of the petitioner. This is clear from the polling agent form (Ext. 3Z/114, read with Exts. E, and E/1.) the signature of this witness on that polling agent form, and in cross-examination it has been taken from this witness that on the second day of the polling on which day this occurrence is said to have taken place, he had gone to Maniama from Jahanabad in the morning and had remained there the whole day. After having taken this fact from this witness in cross-examination, it was not at all put to this witness that there had been occurrence like the one alleged by the petitioner and that shows that the petitioner was not prepared to do so because his case was not true. R.W. 34 is Sasco Singh. He says that he is a member of the District Congress Committee of Gaya. He produced one document (Ext. F) a post-card addressed to him. There was some controversy that this post-card had been addressed to one Sahdeo Singh of another village and not this witness who is a resident of village Nawada and reliance was placed in this connection on the fact that in the address portion of the post-card (Ext. F) something was written which had been penned through and then the word 'Nawada' had been put there. Nevertheless, this witness stuck to the position that he had been a member of the Congress Committee and said that he would be also to produce other papers in proof of this fact. We do not see any reason to disbelieve the evidence of this witness on this point. He has also said that he had visited Maniama on the polling days and that there had been no occurrence. The last witness is R.W. 38, the respondent No. 1 himself, who has also denied this occurrence.

79. It may also be mentioned in this connection that P.W. 75, the petitioner, has said nothing on the point of this occurrence although in the election petition in the list of particulars he has stated clearly in the verification portions of the election petition as well as the list of particulars that all the facts stated by him were true to his personal knowledge. What then prevented him from stating in court while deposing that an occurrence like the one which we are discussing had actually happened, is not clear to us. We are satisfied, on a consideration of the evidence, therefore, that this allegation of the petitioner about an occurrence of rioting and assault at Maniama booth is not correct. Evidence of riot by respondent's men at Maniama is also not in accordance with petitioner's case in the petition that people of Maniama were the obstructors.

Hati

80. On this point the petitioner has examined P.Ws. 6, 9, 10, 11, 56, 58, 62, 68 and 75 and the respondent has examined R.Ws. 15, 34 and 38.

81. Now we find that according to the evidence there had been also a case under section 107 Cr. P.C. regarding the occurrence at Hati, but again, the petitioner has not produced any document in connection therewith in support of the evidence of the petitioner, specially of P.W. 6. P.W. 62 has admitted that his report regarding the polling at Hati was that it had passed off peacefully. P.W. 58, the Presiding Officer, has not said anything about this occurrence at Hati. He has been asked nothing about it in his examination-in-chief. In the cross-examination he has admitted that he was also the Presiding Officer at Hati and there had been peaceful voting at that place. It is not necessary to refer to the general statement made by P.W., 56, the Returning Officer, in his cross-examination that as far as he remembered, in Jahanabad constituency

the polling had passed off peacefully. P.W. 75 also is silent on the point just as he is in respect of Maniama and for reasons which we have already stated above, his silence in respect of this Hati occurrence must also lead to an inference that the occurrence was not true.

82. As regards the other witnesses who have come to prove the occurrence as eye witnesses, P.W. 11 cannot at all be believed. According to his evidence it appears that after he had recorded his vote, he remained in the Congress Office at the booth till evening. It could not, therefore, have been possible for him to see the occurrence which had taken place far away from that place and his earlier evidence that while he was returning home he had seen the occurrence cannot be believed to be true. It is clear from the evidence of P.W. 10 that the occurrence had taken place about 300 yards away from the booth. As in respect of Maniama, so in respect of Hati also, only one voter who was victim of the riot, has been examined, namely P.W. 10. According to him 60 voters were driven off by 15 to 20 socialists only while according to P.W. 11 the mob was of 100 to 150 men. P.W. 6 has said that he had seen the occurrence because he happened to be present as polling agent, but from the polling agent form, all the polling agent form of the constituency which had been produced in this case and are Ext. 3 series, it appears that he was not the polling agent of the petitioner at Hati. Another point which strikes us is that it appears from the evidence of this witness that a complaint had been made to the Presiding Officer. We have already said that the P. O. has said nothing on this point of any occurrence at Hati, and it does not stand to reason that only an oral complaint would have been made about serious matter like this.

83. We need not discuss in detail the evidence of R.Ws. 15, 34, and 38. They have denied this occurrence and from the evidence which they have given it appears that they were present at this booth and were, therefore, in a position to deny the occurrence.

84. In conclusion, and on a very careful consideration of the evidence adduced, we are of the opinion that this occurrence has also not been proved by the petitioner. Here also it may be noted that the evidence is not in consonance with the case in the petition. Evidence in substance is about riot by socialists or red caps but in petition violence is said to have been perpetrated by the respondent himself.

Chainpura

85. As regards this occurrence, the witness for the petitioner are P.Ws. 19, 20, 22, 29, 30, 45, 46, 56 and 75 and the witnesses for the respondent are R.Ws. 6 to 11, 17, 20 and 38.

86. It appears from the evidence of P.W. 19 that a complaint petition had been filed about this occurrence. That complaint petitioner is not forthcoming. We have already stated about that P.W. 56 has stated that as far as he remembered, the polling had taken place peacefully in Jahanabad constituency. That is also a fact which goes against this case of the petitioner. A very significant fact occurring in the evidence is that P.W. 30 Kamaldeo Sharma who was of Chainpura itself and had his house only about 200 yards away from the booth in question, has stated that he could not cast his vote because he thought it safe to remain neutral when there was "jhagra" between the parties. He has not mentioned at all about any riot by which he was prevented or other witnesses were prevented from casting their votes. This witness was clearly asked and the question put to him was as follows:—Was there any other reason? and his clear reply was 'No'. In our opinion, this evidence should be taken as a settler on this point.

87. The P.Ws. have made statements which are against the record, inasmuch as it appears that voters of Karauta, Palopur, Chainpura and Bastapur had been prevented from voting due to riot. Of these four villages, the polling date of Chainpura and Bastapur was on the first day and that of Karauta and Palopur on the second day, but if we believe the witnesses, it would appear that even the voters of the first day were going to poll their votes on the second day and those of the second day were going to poll their votes on the first day. This fact is very damaging to the case of the petitioner on this point. It would appear from the evidence of P.W. 29 that the riot had taken place on only one day at Chainpura, because the relevant statement in his deposition is that the riot took place on the first day of the polling, but the clear case of the petitioner is that the riot had taken place at Chainpura on both the dates of the polling. P.Ws. 20, 22 and 24 have contradicted themselves on the point as to the voters of which village had been assaulted on the first day and of which village on the second day. If

we believe one witness, for instance P.W. 20, the riot took place 250 steps away from the booth. P.W. 19 says that it took place 200 yards away from the Congress Camp which was outside the booth enclosure. P.W. 45 says that the *mar-pit* had started close to the polling booth about 2 to 4 banses away i.e. about 12 to 24 cubits away from it. It seems to us impossible to believe these witnesses on this point.

89. We have already referred to the evidence of P.W. 56, the Returning Officer and P.W. 75 has said nothing on this point.

90. R.W. 6 is Bishundhari Mochi who is a man of Karauta, one of the villages in question. He was also a voter and he stated that he had gone to vote. He had cast his vote and there had been no occurrence. It is significant to mention that this witness is a ploughman of Parasnath Singh, one of the P.Ws. (P.Ws. 29) R.Ws. 8 and 9 are the other two voters of Karauta who have also come to prove the same fact. R.W. 17 was a polling agent of Sheobhajan Singh, respondent, at Champura. He has also denied the occurrence. R.W. 20 was the polling agent of Thaneshwar Babu, another respondent, at this booth Ext. (3229) and he has also denied the occurrence. R.W. 38 is the respondent himself. He has also done the same thing.

91. In the circumstances of the case and after a very careful consideration of the entire evidence, we have come to the conclusion that the petitioner has not been able to establish that there had been a riot at Chainpura resulting in scaring away the voters of the petitioner. Moreover the case in petition as also in evidence is that violence was practised by the respondent's men but there is no assertion that it was done by respondent's or his agent's or workers' knowledge or connivance.

92. The next item of corrupt practice is that the petitioner had paid 8 annas per head to some voters of Babhana, Amain and Chanpura to cast their votes for him. This is the allegation in the list of particulars.

93. Names of 26 persons have been given in the list of particulars out of whom the petitioner has been able to examine only two who have supported him and the third man P.W. 31, Rajnandan Chamar, although examined by the petitioner, has said nothing on this point. On the contrary, he has stated that he had no talk with Sheobhajan Singh at the booth but no further question was asked from him and it is clear from the evidence of other P.Ws., namely P.Ws. 5, 32 and 34 to 40, that this Rajnandan Chamar along with P.W. 32 had gone to the booth and there payment of 8 annas had been made. So, there can be no doubt that this Rajnandan is one of those persons who had been mentioned in the list of particulars as a recipient of 8 annas, probably to cast his vote for the respondent. Therefore, if this witness has not supported the petitioner, it is a very important fact which has to be kept in view.

94. Another significant fact is that not a single person of Chanpura booth has been examined although 9 persons have been named in the petition. On the other hand, the respondent has examined Deolal Chamar (R.W. 2), Anup Chamar (R.W. 8) and Rambalak Chamar (R.W. 3). The two persons out of the persons named in the list of particulars, who have come to depose for the petitioner, namely Rampati Dom and Raghunath Musahar, Rampati is the tenant of Sitaram Singh of Amain who is P.W. 22 and his evidence shows that he is a deeply interested witness and ^{son} of Babhana (P.W. 35) is the servant of P.W. 5 Badri Narain who is also deeply interested in this case for the petitioner and had been actually helping him by being present in court on several dates, as it appears from the evidence of P.Ws. 8, 35, 36, 62 and R.W. 38 is the respondent. So far as P.W. 34 is concerned, he is a resident of a place 18 miles away from Babhana booth and he has not been able to give satisfactory explanation as to how he came to be present on the date of the election and to have seen the payment of 8 annas bribe. He said that he had gone to his Nanihal which was just close to the booth and he claimed that one of his maternal uncles was one Ramdhani who had died only last year, but P.W. 36, a man of that very place, has stated that this Ramdhani had died 10 years ago. These facts show that the witness is absolutely unreliable. P.Ws. 36 and 37 are members of the family of P.W. 5. The first is his uncle and the second is his brother and these two persons have said that one Jamuna Musahar had been paid 8 annas by the respondent but that Jamuna Musahar has not been examined and so far as P.W. 5 is concerned, he said that he learnt from Ramdhani and Sheodhani Beldar that they had received 8 annas each from the respondent, but Sheodhani is R.W. 18 and he has denied having received any amount from the respondent. Sheodhani Beldar is also one of those persons mentioned in the list of particulars. These three persons, namely P.Ws. 5, 36 and 37, who are relations as mentioned already, have also got clear reason for helping the petitioner, because P.W. 35 Raghunath Musahar has admitted that Sidhi Narain Singh (P.W. 36), uncle of P.W. 5, and Sheobhanjan Singh respondent had fought criminal cases. P.W. 38 is of village Faridpur and

he says that he had seen payment of 8 annas to Rampati Dom (P.W. 32), but Rampati has not named this man at all as having been present or having seen the payment. P.W. 39 has come to prove that he had seen payment to Rajnandan (P.W. 31) but P.W. 31, as we have already seen above, has said nothing on this point. Moreover, he has admitted that P.W. 22, who is deeply interested in this case for the petitioner, is his brother by village relation. P.W. 40 has said that respondent had paid 8 annas to Rampati Dom on the 2nd day of the polling but P.W. 32 Rampati says that he had received the money on the first day of the polling when he had gone to vote. It seems impossible to us, in face of this state of evidence, to hold that the petitioner has proved beyond doubt that the respondent had paid bribe to the voters.

95. We may also point out at this place that in the list of particulars it is mentioned that this payment had been made so that the voters who received the amount might vote for him and that was the object for the payment, but Rampati and Raghunath Musahar have stated that they were asked not to vote for anybody and they refrained from voting. There is also this inconsistency in the evidence given on this point.

96. The respondent has examined R.Ws. 2, 3, 4, 6, 8, 11, 12, 17, 18, 19, 30, 32 and 38 on this point. So far as the respondent's evidence is concerned, I have already referred to the fact that at least four out of 26 persons, named in the list of particulars, have come forward to deny that they had received any amount as bribe from the respondent for casting their votes in his favour. They are Deolal Chamar (R.W. 2), Anup Chamar (R.W. 8), Rambalak Chamar (R.W. 3) and Sheodhani Beldar (R.W. 18). We have read their evidence carefully and we see no reason to disbelieve them. There is also nothing in the cross-examination to suggest that these persons had for any particular reason, subsequently gone over to the side of the respondent and so their evidence should not be believed.

97. Apart from this, we have got the evidence of the other witnesses mentioned above, to prove that no such payment had been made and that Sheobhajan, Singh respondent had not visited some of these booths and those which he had visited, he had halted there for a few minutes only. P.W. 75 himself has not said anything on this point.

98. On a very careful consideration of the evidence and the circumstances of the case, we are of the opinion that this allegation of payment of bribe to the voters by the respondent for voting for him is not true.

Issue No. 10

99. The next corrupt practice alleged is that the respondent had at his disposal one motor truck and one motor car for carrying voters and that he had actually carried voters to Mai, Nonhi and Kako booths. The petitioner has examined 8 witnesses on this point, namely P.Ws. 50 to 52, 54, 71, 72, 73, 74, 75 and 77. The respondent has examined himself and has denied this allegation and he has examined 4 more witnesses, namely R.Ws. 1, 15, 22 and 34 on the point.

100. Before we examine the evidence, we should like to mention that the allegation on this point is quite vague. The petitioner has not given important facts in this connection, such as the names of the drivers of the truck and the car and the names of voters who are said to have been carried in those vehicles. These were very important particulars and if really the case of the petitioner was true on this point, it was expected that he would have given at least some names of the voters who had been carried.

101. P.W. 75, the petitioner, as we have already mentioned this fact above, has verified the particulars and the election petition stating that the allegations made by him were true to his personal knowledge. But strangely enough, he has said nothing on this point in his evidence before us. That the petitioner had competent source of knowing the names of the voters, is clear from the evidence of P.W. 71 Rajendra Pandey of Mai who, if he is believed, has stated that he had seen the respondent bringing voters in truck on two occasions, once at 10 A.M. and second time at 3-30 P.M. The voters got down from the truck near a railway gumati and this witness, who claims to have been a member of the Socialist Party, had come with those voters to Socialist Camp near the booth and there those voters were given purjas whereafter they proceeded to the booth. If these statements were true, the petitioner was expected to have known at least the names of those voters to whom purjas had been given and who had been accompanied by this witness from the gumati where they had got down from the vehicle up to the booth. The absence, therefore, of any name whatsoever from the list of particulars clearly signifies that this charge is not true and that a vague allegation has been made only to make out a case against the respondent.

102. Out of the witnesses examined, P.Ws. 50, 51 and 54 are strangers inasmuch as P.W. 50 is of Arrah Town, P.W. 51 is of Bharasara, a village in Patna district, far away from the place in question, and P.W. 54 is also of Arrah Town. They are entirely chance witnesses and after a very careful consideration of their evidence, we are not at all inclined to place any reliance on them. P.W. 50 says that he had gone to Kako to purchase a cow which he actually never purchased and that was his first and the last visit to Kako. It really seems surprising that the need of this witness, for a cow should have coincided with the date of the polling and he should have been so unconcerned about the purchase of a cow that he should have gone to the booth to see the polling instead of finding out a cow for himself. Moreover, it seems highly improbable for us to believe that any prudent man would have thought it proper to select the two polling days, very busy days in a village, to make purchase of a cow. He has admitted that he had received summons on a road in Arrah Town and he is not known to the petitioner at all. He had not said to anything prior to 18th May 1955, on which date he was examined in this case, that he had seen motor truck at Kako. We are at a loss to understand as to how the petitioner could come to know that this witness had seen a motor truck at Kako which was carrying voters of Sheobhajan Singh respondent. P.W. 51 has admitted that he ordinarily resides at Patna where he is learning work under a registered clerk of the advocate of the petitioner and was doing pairavi in respect of this case on behalf of the petitioner. He remained in the court area while this case was being heard. Obviously he is a thoroughly interested witness. Moreover, it is not clear why he happened to be at Kako when his own polling booth was 2 miles away from it. He admitted that he did not remember the name of any voter. P.W. 54 is also a man of Arrah town, a hawker of sweetmeats, during the last general election and what he has actually proved is that he had seen Sheobhajan Singh coming in a taxi open car with 5 or 7 persons, but he did not hear any talk between them. So, even if the evidence of the witness is believed, it proves nothing because he does not say that those 5 or 7 persons were voters. If Sheobhajan Singh had come in an open car with his friends, canvassers or workers, that would be no offence. P.W. 52 claims to have been a polling agent of the petitioner, but he admits that he had not complained either in writing or orally about this fact of voters having been brought by Sheobhajan Singh not even to Abdul Hai (P.W. 48) was working as the polling agent of the petitioner at Kako. He has stated that he had complained about this fact to one Govind Prasad (P.W. 55) but that witness has said nothing on this point. P.W. 48 Abdul Hai has not also said anything. This witness was unable to give the registered number of the lorry in question.

103. We have already dealt with the evidence of P.W. 71. We are not impressed with his evidence. He claimed to be a member of the Socialist Party. This was challenged on behalf of the respondent and a petition was filed on his behalf calling upon this witness to produce the receipts of payment of membership fee to the Party (*vide* order sheet dated 14th June 1955) but no such receipt or any paper showing that this witness had actually been a member of the Socialist Party was produced. On the other hand, he has admitted that Jagadanand, his brother, was polling agent of the petitioner at Mai. It has been argued on behalf of the respondent that this witness has come to depose for the petitioner on account of this reason. He admits that he is a teacher in a Middle English School feigning ignorance on the point that Fida Hussain petitioner being a member of the District Board of Gaya which fact has been admitted by several witnesses of the petitioner. This witness has gone so far as to deny that the Middle English School where he is a teacher, though recognised, was not under the District Board of Gaya. He has not named any of the voters whom he had seen getting down from the truck. We are not at all prepared to believe this witness.

104. P.W. 73 Ramprit Singh has stated that he had seen Sheobhajan Singh bringing voters on motor truck on the second day of the polling in his presence when the driver had demanded the hire from Sheobhajan Singh respondent. But he was unable to say who was the driver and what was the registration number of the truck. He had cast his vote on the first day of the polling. It is not clear as to how he could be present just in time to see the fact on the second day of the polling. He has further proved that on the road by which the truck had come, there had been some cuts in it which had been repaired at the instance of the S.D.O. of Jahanabad. The S.D.O. Jahanabad, is P.W. 56, but nothing had been asked from him on this point though the petitioner was careful enough to put to him several other matters regarding this case and this witness has given his answers to those questions so far as he remembered the facts.

105. It would appear from the evidence of P.W. 74 Rampadarath Singh that at first he meant to say that on the first day of the polling when he had cast his vote, he had seen Sheobhajan Singh bringing voters in truck. But realising that

this would go against the whole case, because the other witnesses had said that this had happened at Nonahi on the second day, of the polling, later on he said that he had seen the voters getting down from the truck on the second day. A petition was filed on the next day by the petitioner alleging that a mistake had crept in the deposition of this witness and it was said that he had not used the word 'that' before the word 'day' in order to indicate that he had seen the getting down of the voters from the truck on the day he had cast his vote, i.e. on the first day of the polling. On behalf of the respondent it was objected that the evidence had been correctly recorded. We heard the matter and we have recorded an order saying that we had correctly recorded the deposition. The depositions were being typed in Court on dictation to the full hearing of the lawyers. Thus there was little chance of such mistakes without being detected then and there. Besides, the certificate at the end of the deposition shows that it had been read over to the witness who had found it to be correct and had then attested it. We are not prepared to hold that the witness had not meant to say in the earlier part of his deposition that he had seen the getting down of the voters on the first day. If the contention of the petitioner were correct, there was no necessity of further asking him in examination-in-chief that he had seen the occurrence on the second day. That also indicates that actually this witness had, at first, stated that he had seen it on the first day. Assuming that the contention of the petitioner is correct, even then we are not prepared to rely on this witness, because he, in the first place, does not deny that Sheobhajan Singh respondent had reported against him in a dispute between him and one Fagu Mahto or his relation. That indicates that this witness had some reason to depose against the respondent. Then again, he did not remember if he had told anybody about this occurrence and was unable to give the name of any of the voters. The last witness for the petitioner is P.W. 77, who has claimed to be a Mukhia of the village Nonahi and he came to prove that while he was repairing the road at the direction of the S.D.O. in his village he had seen the respondent bringing voters in a motor truck all of whom got down near busti Koiri-Bigha. We have already referred to the fact that the S.D.O. (P.W. 58) has said nothing on the point that he had asked anybody to repair the road. We are also unable to understand how the petitioner came to know that this witness did anything, because, according to this witness he had not told any Congress worker or any worker of any other candidate of this incident. This witness also seems to have made inconsistent statements. From his examination-in-chief it appears that the voters had got down from the truck about 3 or 4 plots of land away from him, but in the cross-examination he said that the motor truck had stopped only about 4 or 5 cubits from the place where he was getting the road repaired. He did not know the owner or the driver or the registration number of the truck.

106. In conclusion, we are unable, on the evidence of such witnesses, to hold that the respondent had carried voters in motor car or truck to some of the booths.

107. We have already stated above that the respondent has examined himself and four more witnesses on the point. We have considered their evidence also and we find that they are competent to deny this occurrence. R.W. 1 was the polling agent of Jan Sangh candidate Thaneshwar Babu, who is also a respondent in this case. He stated that during the election time motor trucks or motor cars could not pass through the road in question. He said that he had not noticed the S.D.O., Jahanabad, passing through that road and said that there were several big ditches in that kachha road. No particular reason has been given to disbelieve the evidence of this witness. The next witness is R.W. 15. He was the polling agent of the respondent at Nonahi. He is also a Panch of Nonahi Gram Panchayat and he has proved that Ramprit Singh (P.W. 73) was at polling booth at Nonahi and had been seen by him 3 or 4 times there on the polling days. This proved that Ramprit Singh's statement that he was away from the booth to have seen the carrying of the voters in truck was not true. This witness has further proved that the S.D.O. had not visited Nonahi. He also proved that P.W. 77 Rampravesh Pandey was moving about in other tolas of the village and was not present at the booth and that he had not got any road repaired. The next witness is R.W. 22. He was a worker of Mathura Das, another candidate, who is also a respondent. He had worked for him at Mai Booth and he said that Sheobhajan Singh had visited the booth on the second day of the polling but it was not true that he had brought voters in a motor truck. Nothing has been suggested against this witness. The last witness is R.W. 34. He has also proved that Sheobhajan Singh had not carried voters to Mai in motor truck.

108. We find that this charge has also not been proved.

Issue No. 9

109. The next corrupt practice is that Sheobhajan Singh respondent had distributed a handbill which has been marked Ext. 1/1. This handbill appears to have been printed by Deo Prakash Press, Jahanabad. It gives certain reasons why votes should be given to Socialist Candidate, some of the reasons being that every Kisan will be given at least 20 bighas of land and every employee shall be given minimum salary of Rs. 100 and maximum of Rs. 1,000 per month. The education of boys and girls will be free and all will get free medicine. It has been said in this handbill that for these reasons *inter alia*, votes should be given to Sheobhajan Singh who was a candidate of the Socialist Party for the Bihar Assembly seat.

110. It has been urged that under section 123 sub-section (1) clause (b) of the Representation of People Act, this was a corrupt practice, because it was a promise to an elector to vote at an election and this promise had been made by the candidate, namely Sheobhajan Singh, because he had himself distributed this handbill to several persons.

111. Now, the evidence on this point consists of the statements on oath of P.Ws. 5, 43, 53, 60, 71 and 75. On behalf of the respondent this has been denied by R.W. 38, the respondent himself and the other witnesses examined by him on this point are R.Ws. 11, 17, 19, 30 and 38.

112. Out of the witnesses examined by the petitioner, P.Ws. 5 and 60 are highly interested persons. P.W. 75 is the petitioner himself. P.W. 5 is Badri Narain Singh, about whom we have already said in the earlier part of this judgment that he is a highly interested person. His family members have fought criminal cases with the respondent and it was he who had always been helping the petitioner in this case taking keen interest in the matters so much so that he tried to approach P.W. 62, as will appear from the evidence of this witness when he had come to depose in this case. He was also found sitting in the court room on several dates with the lawyer of the petitioner. P.W. 60 has admitted that he has got sympathy for the Congress for the last 7 or 8 years and out of his own accord he had started working for Fida Hussain during the last general election. P.W. 43 has not been named in the original list of witnesses which had been filed by the petitioner on 12th June, 1955. He was given dusty summons hand to hand at Arrah on the day he came to depose in this case and he explained that he had come to Arrah on that day to make purchases in connection with the marriage of one Kedar Babu and then he had received summons from the petitioner at Arrah railway station. He is a man of Gaya district and it is not clear to us why he should have come to a small place like Arrah, leaving Patna, for making the purchases. A suggestion has been made that the sister of Badri Narain Singh (P.W. 5) is married at his place, but this witness had not had the courage to deny this fact. P.W. 53 did not remember the contents of the other handbill which the respondent had given to him and as regards the handbill in question, he said that it contained the promise of distributing 20 bighas of land to the poor. We have given a summary of the relevant promises given in this handbill and that would show that this witness had not really got any leaflet otherwise he would not have failed to notice that there were other promises also in that leaflet. We have already discussed the evidence of P.W. 71. He is the same person who claimed to be a member of the Socialist Party but failed to produce any paper in support of his membership though he was challenged to do so. Moreover, his evidence shows that he has said nothing regarding this leaflet which we are considering. He has spoken about the other leaflet which we shall consider presently. He, however, admitted that he has not got with him any leaflet nor does he remember the contents thereof. P.W. 75 has stated that in course of his tour during the election he came across the leaflets and one of the places being Kako where somebody had handed over that leaflet to him, but he was unable to name that person. He also could not tell us the date on which he had come across that leaflet and has admitted that he neither reported this matter in writing or orally to any authority nor did he publish any rejoinder. We do not think, therefore, that it has been proved that Sheobhajan Singh had distributed the handbill in question. We are also not prepared to hold that any such leaflet had been distributed as alleged by the petitioner. There is absolutely no evidence that the respondent Sheobhajan Singh got it printed.

113. Assuming that such a leaflet had been distributed but if we are not satisfied that it had been done by the respondent, then the position would be that it would come under a minor corrupt practice under section 124 of the Representation of People Act. Even if it be assumed that such a minor corrupt practice had occurred, unless there is evidence to prove that this had materially affected the

result of the election, it will have no effect in favour of the petitioner and so far as this point is concerned, no evidence has been adduced on behalf of the petitioner to show that this distribution had in any way affected the polling of the votes. We have already dealt with the evidence of the witnesses, none of whom has spoken a word about its effect whatsoever, and on the basis of that evidence we are not prepared to hold that this leaflet had been distributed at or near the booth in which case it might be argued with some reason that the voting had been affected by reason of the distribution of this leaflet just in the nick of time when the voters were going to cast their votes at the booths.

114. On the other hand, if we come to the evidence of the R.Ws., we find a complete denial of the distribution of any leaflet. R.W. 11 Jagdeo Prasad has proved that he was from the very beginning to the end at the booths, namely Chanpura and Amain, on the polling days. He has also stated that Sheobhajan Singh had not distributed any handbill on any day. We do not see any reason to disbelieve the evidence of this witness merely because he is a member of the Socialist Party and is in occupation of one of the flats of M.L.A.'s quarters at Patna. He has stated that that flat had been allotted to one Khublal Mahto, M.L.A. of Saharsa and he came in contact with him because he was engaged as a private tutor of his son. These do not seem to us sufficient to discredit the evidence of this witness as unreliable. He is an educated man being Master of Arts and Editor of a paper namely 'Janata'. We do not think that he would perjure himself on this point merely to help Sheobhajan Singh. R.W. 17 Shconandan Singh was polling agent of Sheobhajan Singh at Amain and Chanpura. He has also stated that he had remained at Amain booth from beginning to end. Sheobhajan Singh had visited that booth for a few minutes and had not distributed any handbill there. We also see no reason to disbelieve his evidence. The only thing against him is that he had been a member of the Socialist Party since before 1942. This fact alone should not adversely affect the evidence of this witness and there is no particular reason for him to depose falsely in favour of the respondent. R.W. 19 is Jagrup Pandey and he had accompanied Sheobhajan Singh to Amain. He has stated that Sheobhajan Singh remained at Amain for a short while and then left the place. He had not distributed any handbill. There is also nothing particular against this witness except that he is a member of the Socialist Party. Of course, this witness has said that Sheobhajan Singh had stayed at Amain for about an hour while P.W. 17 has stated that he remained there for a few minutes, but this discrepancy in the evidence of these two witnesses should not necessarily be taken as evidence of the fact that what they have stated about the non-distribution of handbill, is untrue and not reliable. R.W. 30 is Parma Mahto of Amain. He seems to be a thoroughly disinterested person. He has got his house only 3 Rassis away from the booth in the village and he says that he was present when the voting was going on at the booth itself and that Sheobhajan Singh had not distributed any handbill. R.W. 32 is Ramsarup Singh who, as we have already stated earlier, was admittedly a polling agent of Fida Hussain petitioner and he has clearly stated that Sheobhajan Singh had not distributed any handbill in Amain or near Amain booth. He stated that he was present at Amain on both the days of the polling. He has admitted no doubt that he used to leave the booth for one hour or so to take his lunch or breakfast, but he stated that he used to return to the booth via the main road from his house. In the circumstances, we are not inclined to hold, as urged by the learned advocate for the petitioner, that in view of the aforesaid facts he may not have seen Sheobhajan Singh distributing handbills. Being the polling agent of the petitioner, if really Sheobhajan Singh had distributed any handbill, even if he left the booth for a short while, he was expected to have come to know this fact. It was then urged that this witness should not be believed because he had now gone over to the side of the respondent who had begun to help him. This has been denied by this witness.

115. The last witness is respondent himself (R.W. 38). He saw the handbills and said that he never distributed these handbills nor got them printed.

116. As we have stated above, we find that Sheobhajan Singh had not got this handbill printed nor had distributed it anywhere. We also find that the petitioner has failed to prove that the handbills had been distributed by any other person of the respondent No. 1 at or near the booths on the days in question.

117. We would like to dispose of one controversy regarding the other handbill at this very place. That handbill is Ex. 1. It deals with the personal conduct of one Sakal Singh who is said to have been the polling agent of Fida Hussain. It says that Sakal Singh is a hypocrite and indulges in cheating, chicanery and other immoral acts such as sodomy etc. and the allegation is that this handbill also had been distributed by the respondent at or near the booths on the polling days. The evidence consists of the testimony of the same witnesses whom we have discussed above. We need not enter into a discussion of the evidence and

for the reasons which we have already stated above, we are not inclined to accept the evidence that this handbill had been printed and distributed by the respondent or anybody on his behalf or with his connivance or with the connivance of anybody for him. There is no question of major or minor corrupt practice in connection with the distribution of this leaflet, because this was not against the candidate but against the character of the polling agent of the candidate. Under section 123 of the Representation of People Act, the publication by a candidate or others of any statement of fact about the personal character of any candidate is major corrupt practice and if the publication is done not by the persons mentioned in section 123, but by others, then it would be a minor corrupt practice, but in both the cases the personal character or conduct of the candidate or the candidature or withdrawal of any candidate should be the subject matter of any statement of fact which is false or which the publisher either believes to be false or does not believe to be true. In this case, as we have already stated above, the personal character or conduct of Sakal Singh, a polling agent of the petitioner, has been attacked. It was, however, urged that in so far as this handbill said, that Sakal Singh was a hypocrite and immoral person, was asking people to give vote to mean and fallen persons who were store-houses of all evils, were thieves of iron, cement and molasses and then it was said that in so far as the song had referred to certain facts against the Congress, it followed that the candidature of Fida Hussain had been attacked and, therefore, it was a major corrupt practice under section 123 sub-section (5) of the Representation of People Act. In the last part of this leaflet in a way a reference has been made to the facts that the Congress people were looters, every thing had become dear, namely cloth, grains etc., and that by means of control, looting had practised. In the end it was said that everybody should be careful and keep himself away from the Congress men.

119. In the first place we are not impressed with this argument because Rajendra Pandey (P.W. 71) has stated that when he read this leaflet the impression which he formed was that Sakal Singh was a goonda, vagabond and scoundral. Even assuming that the aforesaid argument of the learned advocate for the petitioner is correct, we do not think that the petitioner has succeeded in proving that this leaflet had been printed, published and distributed by the respondent or his agent or any person with his connivance or with the connivance of his agents. We have no reliable evidence to show as to where and by whom and at which place this had been printed. It does not contain the name of the printer or publisher. We are satisfied, therefore, that the petitioner has failed to prove this charge in respect of this matter and we are not prepared to hold that any corrupt practice or illegal practice had been committed in respect of this matter.

Issue No. 11

119. The allegation in the schedule but not in the petition is that the Presiding Officer of Bistol booth had asked many voters of the booth to vote in the box which contained the symbol of bar tree which was the symbol of the respondent. It was further alleged that this was brought to the notice of the Returning Officer on 11th January, 1952, at Jahanabad. The Returning Officer had promised to look into the matter, but when the petitioner's agent went to him on the date fixed, he did not do anything.

120. On the first part of the allegation we have got the evidence of P.Ws. 13, 14, 17, 25 and 59. P.W. 7 is Kailash Singh. He says that whenever a voter, due to defective eyesight, wanted to know the particular ballot box in which he wanted to vote, the Presiding Officer, Mathura Babu used to point out to him the ballot box containing the tree as its symbol. This really does not support the case as alleged by the petitioner in his petition. He named two such persons, one Babu Fekan Singh of village Manebigha, another Babu Bilas Singh of Bistol. Now Babu Fekan Singh has not been examined in this case. B. Bilas Singh is P.W. 25, but we will show when considering the evidence of this witness, that he does not support the evidence of P.W. 7. Moreover, this witness has admitted that he did not file any petition complaining about this conduct of the Presiding Officer and that so far as he knew, no polling agent had filed any such petition. The most significant fact stated by him was that Bilas Singh (P.W. 25) as well as B. Fekan Singh had not been really blind but they had posed to be so. If that was so, then it directly affects the evidence of Bilas Singh adversely. The next witness is P.W. 13 Sarangi Dusadh. We have already considered his evidence in the earlier part of our judgment and we have shown there that this witness was not reliable. He has admitted that he had sought the help of the petitioner in the studies of his son four years ago. He did not remember the name of the officer who had asked him to put the ballot paper in the box containing the symbol 'tree'. He also stated that he had not disclosed this fact to anybody prior to the date on which he has come to depose in this Court about this point and that the talk

between him and the Presiding Officer regarding this matter had taken place in presence of several other officers. This makes the whole case improbable. We do not see how the Presiding Officer, if he really intended to help any particular candidate, would have made this matter public by committing the folly of asking the voters to cast their votes in a particular box openly. The next witness is P.W. 14 Shyam Narain Singh of Aijani. He said that one voter, but he did not remember his name, had complained to him about this fact and that next day he had written to the Chief Minister about it. But he admitted that neither he nor any other polling agent filed any petition about the aforesaid conduct of the Presiding Officer. That alleged letter sent to the Chief Minister has not been called for. This witness said that he had also gone to the S.D.O. two days after the filing of this complaint. The S.D.O. was Mr. B. S. Mukherji (P.W. 56), but nothing appears to have been asked from him about this matter. P.W. 17 is Jagannarain Singh. He has given a general evidence that people were complaining about the conduct of Bara Officer saying that he was siding the Socialist candidate, but he admitted that he did not inform the polling agent of the petitioner of this fact. P.W. 25 is Bilas Singh of Bistol. He said that when he went inside the polling compartment, he found it dark and then enquired from one Hakim the place where the box containing the symbol of cow was placed. But that Hakim asked him to put his vote into the box containing the symbol 'tree'. Actually, however, this witness was clever enough to put his vote into the right box, namely the box containing the symbol 'cow' because he wanted to vote for the Congress. We have already referred to the evidence of P.W. 7 to the effect that Bilas Singh was not really blind but was posing as such. This means that this Bilas Singh was dishonest. He appears also to have said that there were three ballot boxes in that compartment. This is obviously incorrect, because there must have been as many boxes as there were candidates, which were about 8 or 10. It seems to us that he probably referred to certain incident which might have taken place in the polling compartment for the Parliamentary seat where there would have been three boxes because there were three candidates only. The evidence of P.W. 59 has also proved nothing in favour of the petitioner. The witness P.W. 75 significantly enough says that he had gone to the bungalow of the Sub-divisional Officer at Jahanabad along with P.W. Shyam Narain Singh, but that was in connection with other matters and not in connection with this matter as stated by P.W. 14 Shyam Narain Singh. Indeed P.W. 75 has said nothing on this point.

121. We need not discuss the evidence of the R.Ws., namely Nos. 24, 26, 27 and 38 on this point. They have all denied this fact.

122. It is clear to us that the evidence on this point on behalf of the petitioner is not at all convincing and the charge has not been proved.

123. So far as the allegation, therefore, about the conduct of the Returning Officer who had promised to enquire into the matter but did not do so, has not been proved by anybody on behalf of the petitioner.

Issue No. 10A

124. The only point in this connection to be considered is as to whether respondent No. 1 had rented a house at Jahanabad during the election period in which he had started a mess for the purpose of feeding a number of workers who actually used to come there and take their food every day. The expenditure incurred therein by Sheobhajan Singh respondent had not been shown in the return of the election expenses.

125. The respondent has admitted the fact that he had rented a house for which rent of Rs. 10 was paid and he had shown it in his return of election expenses. But as regards the feeding of workers, he has denied it. R.Ws. 1, 2, 17, 36 and 38 have proved that there were no workers living in the house and that none of them had been fed there. We find, after a careful consideration of the evidence that the statements of these witnesses are true. It is noteworthy that R.Ws. 1, 2 and 17 have stated the above facts in reply to the questions put to them by petitioner's lawyer himself R.W. 36 is a very competent witness. He lived in his house just by the side of the house in question. He says that during the last general election he had done some office work of the respondent in the office housed in the building in question. He has clearly stated that there was no arrangement of messing on behalf of the respondent in that office and that 5 or 6 at the most used to visit it in the evening and used to leave it after a few minutes. We are satisfied that the case of the respondent is true. We hold, consequently, that the return of Election expenses of the respondent No. 1 was not false on this score.

Issue No. 6

126. The allegation of the petitioner is that Md. Ishaque, who is respondent No. 2 and who had contested the election, was a person disqualified under section

7(d) of the Act, as he was interested in contracts with the Government. In the petition it is stated in paragraph 7 that he was a P.W.D. contractor. It is not stated, however, what specific contract subsisted between Ishaque and the Government. It is further alleged in the petition that if Ishaque were not allowed to contest the election, the petitioner would have secured at least ninety per cent of the votes secured by him and would consequently have been the candidate securing the highest number of votes in the election. In other words, the allegation is that by improper acceptance of the nomination paper of Md. Ishaque the result of the election has been materially affected. Evidence was led and the parties contested the issue on the following points:—(a) Did Ishaque ever enter **into any contract** with any Department of the Government of Bihar? (b) Was any contract between him and the Government subsisting at the date of filing the nomination paper, which was 24th November, 1951? (c) Was there any objection raised at the time of the scrutiny to the nomination of Ishaque? (d) Did Ishaque 'resign' from his position as a "P.W.D. Contractor"? (e) Even if Ishaque had no subsisting contract and had submitted his 'resignation', did he have any dues outstanding in respect of any work completed by him? and (f) If Ishaque was disqualified, was the result of the election materially affected by acceptance of his nomination paper?

127. (a) The fact that Ishaque had undertaken building contracts with various departments of the Government of Bihar is practically admitted. Ishaque is P.W. 67 and his evidence is that from 1942-43 he had undertaken Government contracts and had built several buildings until he "tendered resignation as contractor" on 22nd November, 1951. The other witnesses supporting him are P.Ws. 18, 23, 70 (his cousin) and 76, a P.W.D. Clerk. It is not necessary to analyse their evidence as it has been admitted in the respondent's evidence that Ishaque did some contract work for the Government before the relevant date. We need only refer to P.W. 38, Respondent No. 1 himself, who admits that Ishaque was a Government contractor until he gave up the work two years before the date of nomination. We are satisfied that Ishaque was at some time or other a Government contractor and we have no reason to disbelieve his evidence on this point.

128. But Mr. Verma contends that the allegation that he was a Government contractor is not sufficient in law and that the petitioner should have pleaded a specific contract with the Government. In other words, according to him, before such an issue can be determined, it must be alleged what was the contract and what were the terms of it. According to him even if it is proved or admitted that Ishaque executed building works for the Government, no inference is possible that that was done in pursuance of a contract. He has further urged that in the absence of any document embodying any contract between Ishaque and the Government and in the absence of the testimony of any of the officers of any of the Departments concerned, we cannot hold that Ishaque was ever interested in a contract with the Government. In our opinion, this contention has no force. We are not trying any issue relating to the contract itself. It is sufficient if it is admitted or proved that Ishaque had entered into building contracts with the Government. We are concerned with the existence of a contractual relationship and not the terms of any contract. Moreover, it is not correct in our opinion to say that the existence of a contract cannot be inferred from the mere fact that one party had executed works which the other party had accepted; for, from the performance of an act accepted by any other person a contract can be inferred. The law implies an agreement or contract in such a case. Therefore, we do not think that Mr. Verma is right in saying that in the absence of proof, documentary or otherwise, of the terms of the contract we cannot hold that Ishaque had entered into a contract with the Government.

129. (b) The petitioner has tried to prove by oral evidence that there were subsisting contracts between Ishaque and the Government and that certain works undertaken by Ishaque were still pending. The petitioner's witnesses on this point are P.Ws. 18, 24, 67, 70 and 76 and respondents' witnesses were R.Ws. 23, 29 and 38. The respondent's evidence may be shortly disposed of. Respondent No. 1's witnesses say that the contract between the Government and Ishaque had terminated before the date of nomination and no work was pending. It is necessary to see, however, whether the petitioner's evidence establishes any subsisting contract. P.W. 18 says that Ishaque had been a Government contractor for the last ten years but admits that he does not remember what particular Government work was in Ishaque's hand at the time of the scrutiny. P.W. 24 says that he was a polling agent of Ishaque. In his examination-in-chief he merely says that Ishaque was a Government contractor. He does not say clearly that Ishaque had contracts at the relevant date. Md. Ishaque is P.W. 67. He says that in spite of his resignation, his work was going on. He was confronted

with his own statement in Ex. D where he stated that "for the last one year I have made no tender for any work nor is there any work in my hand at present" and he answers "if these statements are contained in that letter, they are true and according to my instructions". The next witness is P.W. 70, a cousin of Ishaque, who says that Ishaque was a contractor and had been doing this work since eight years last. But in cross-examination he admits that he had no knowledge when a particular work was taken by Ishaque and when it was completed. P.W. 76 speaks of a contract for the building of a hostel for one hundred students at Patna which, he says, was finished in 1951. The only document is Ex. D which shows that there was no pending work in the hands of Ishaque. We are, therefore, of the opinion that the petitioner has failed to establish that there was any work pending under any contract between the Government and Md. Ishaque.

130. (c) A good deal of evidence has been adduced on the question whether at the time of the scrutiny any objection was raised to Ishaque's nomination. In our judgment, the question is not material. If Ishaque was disqualified then it will not matter whether any objection was raised to his nomination. Under section 100(1)(c) we have to decide the question of his disqualification irrespective of any objection before the Returning Officer.

131. However, as evidence has been led, it needs a brief discussion. The witnesses on behalf of the petitioner are P.Ws. 5, 14, 18, 56, 67 and 75 and the respondent's witnesses are R.Ws. 5, 17, 28, 31 and 38. P.W. 5 is said to have raised the objection. As to matters reflecting upon his credibility we have discussed his evidence in another connection. He says that he was a candidate for Ghosi constituency and in that capacity attended the scrutiny. Since the scrutiny of Ghosi constituency was finished before the scrutiny of the Jahanabad constituency, it is not clear how he was present during the scrutiny of the Jahanabad constituency. Under section 36 of the Act, persons entitled to be present are the candidate, his election agent, one proposer, one seconder and one other person duly authorised in writing by the candidate. It is not stated that in respect of the Jahanabad constituency Badri Singh (P.W. 5) had any status. However, that may be, he has made statements that raise doubts about his presence. He does not know in which order the several constituencies were taken up for scrutiny and he says that the scrutiny of all the three constituencies was finished on that day which is not correct. He did not put in a written objection regarding Ishaque's nomination. The next witness P.W. 14 is another candidate for Jahanabad constituency who says that P.W. 5 had objected to Ishaque's nomination. He does not remember if the nomination paper of any other constituency was scrutinised on that day. P.W. 18 is another candidate Murlidhar Khetan. He admits that he was a co-worker of the petitioner in the Congress and had withdrawn in the petitioner's favour. P.W. 56 is the Returning Officer who does not support P.W. 5 and the other witnesses. On the contrary, he says that if any objection had been raised, he would have mentioned it in his order sheet. The order sheet (Ex. 4) does not show that any such objection was raised nor is there any such note on the several nomination papers filed by this candidate (Ex. 1). P.W. 67 is Md. Ishaque himself. He supports P.W. 5. He says that the Returning Officer did not put any question to him and that he was merely informed by some one that his nomination paper had been accepted and he left the place "without caring to know what decision had been recorded by the Returning Officer". P.W. 75 is the petitioner. He says that an objection was raised by Badri Singh (P.W. 5). But he does not remember what the Returning Officer had said on this objection.

132. The witnesses of the respondent on the other hand all denied the presence of Badri Singh (P.W. 5) and said that no objection was raised to Ishaque's nomination. R.Ws. 5 and 31 were candidates, R.Ws. 17 and 28 were proposers of Respondent No. 1 and R.W. 38 is Respondent No. 1 himself. They were, therefore, all entitled to be present at the scrutiny. Nothing has been brought out in their cross-examination to discredit their testimony. However, it is not necessary to discuss their evidence on this point in detail. We are not satisfied with the evidence adduced by the petitioner on the point particularly when the Returning Officer's evidence and his order sheet (Ex. 4) do not support the petitioner's case.

133. (d) On the question whether Ishaque had "resigned", there is no difficulty at all. The contents of his resignation letter (Ex. D) dated 22nd November 1951 are admitted by him to be correct. Mr. Singh for the petitioner did faintly urge that since he was ignorant of English and the letter was in English, one cannot rely upon the letter as proving the fact of resignation. The argument has no substance because Ishaque himself in his evidence has admitted

that the letter was written on his instructions and the contents were true. But Mr. Singh has urged that the resignation was not effective because the acceptance of it was not made until the 26th November, 1951 by a letter from the Executive Engineer, which is Ex. 5. This contention also has no substance, because as would appear from the endorsement on Ex. D (Ex. D/3) the resignation was in fact accepted on the 23rd November, a day before the date of filing the nomination paper, and the formal communication to Ishaque on the 26th November, 1951 is of no consequence. In any view of the matter, the issue of 'resignation' raised by the parties is entirely inconsequential. If Ishaque had a subsisting contract, his rights or obligations will not be wiped out by his resignation unless we can find from the document, definite proof of rescission of any contract. On the other hand, if no contract was subsisting at the date, the resignation is meaningless and the acceptance of it is equally meaningless. It would only mean that Ishaque wanted to remove his name from the list of contractors. The letter of resignation (Ex. D) is, in our opinion, of no importance at all except for the purpose of corroboration of the evidence on other matters on this issue.

134. (e) In view of certain legal contentions to which we shall refer in a moment, the more important question is whether there was still any outstanding obligation on the part of the Government in respect of payments for works done by Ishaque. Mr. Singh argues that even if no contract was subsisting in the sense that the contract was fully executed on the part of Ishaque but Ishaque's dues were not paid at the relevant date then Ishaque continued to have an interest in a contract with the Government within the meaning of section 7(d) of the Act. Mr. Verma, on the other hand, urges that if everything under the contract is fully executed, the contract comes to an end between the parties although the claim for money under the contract may be still outstanding. For instance, A promises to paint a picture for B and execute the work but on the part of B there is breach of contract and the dues are not paid up. Does the contract subsist? Mr. Verma says that the contract between A and B has ended and A is now the creditor of B and that the contractual relationship has given place to a different relationship. The question has been settled by a recent decision of the Supreme Court in A.I.R. 1954 Supreme Court page 236. In that case their Lordships were construing a series of contracts arising out of orders for the supply of Biri to the troops placed by the Government within a firm of biri manufacturers (of which a candidate was a partner), which orders were placed in pursuance of an elaborate agreement between the firm and the Government. The particular contracts for supply of biris were executed before the relevant date and their Lordships held that nevertheless the contracts were subsisting by reason of a guarantee clause under which stocks of biris returned by the Government would have to be replaced. Having held that their Lordships went on further to observe—"But even if all that be disregarded and it be assumed that Moolji Sicka and Company had fully performed their part of the contract by placing the goods on rails before 15th November 1951, we are of opinion that the contracts were not at an end until the vendors were paid and the contracts were fully discharged..... The question then is, does a contract for the supply of goods terminate when the goods are supplied or does it continue in being till payment is made and the contract is fully discharged by performance on both sides? We are of opinion that it continues in being till it is fully discharged by performance on both sides." Mr. Verma attempts to explain this decision by saying that in that case all the terms of the contracts were before the Court and it was upon the interpretation of the terms that the Supreme Court held as a fact that the contracts were subsisting and that, therefore, further observations were not necessary in the case. He has also vehemently urged that the facts of the reported case were quite dissimilar to the facts here and that, therefore, the observations, sweeping and wide as they are, may be more of the nature of obiter than the ratio decidende to be applied to this case. It is true that upon the finding that mutual obligations were still outstanding under the contract, the observations quoted above may not have been strictly necessary. But nevertheless the Supreme Court has laid down the law and when, as in this case, the proposition laid down is germane to the issue involved, it has to be applied and is binding on us. There can be no doubt that the proposition laid down by the Supreme Court in that case is that a contract is not fully discharged until the reciprocal promises are fulfilled. Therefore, if the Government's promise to pay money to Ishaque is still outstanding, we must hold that the contract is not at an end. Moreover, the section speaks of an interest in a contract for the supply of goods, and, as observed by the Supreme Court in the case cited above (at paragraph 43, page 243)—"It is obvious that the temptation to place interest before duty is just as great when there is likely to be some difficulty in recovering the money from Government (for example, if Government were to choose not to ratify the contracts) as when there is none". If Ishaque wants to enforce his claim, he will be enforcing the

contract itself. He has certainly interest in enforcing the contract. Consequently, any interest in the contract would come within the terms of section 7(d). However that may be, in view of the Supreme Court decision, Ishaque would be disqualified if we hold that his dues are still outstanding.

135. It is necessary, therefore, to determine whether the Government owed him any money under any contract. On this point the evidence is *exparte* and consists of the testimony of Ishaque and another witness P.W. 76, a clerk of the Public Works Department. Ishaque has stated that his bills have not been settled and that he has sued the Government for his dues. He is corroborated by a document exhibited on behalf of the respondent himself, namely, the letter of resignation, in which he requested that his bills may be settled. We are not concerned with the quantum of his claim. That may be disputed. Even if the claim and other documents were before us, that would not afford the proof of the exact amount of dues. But what is important is that his statement that his bills are outstanding is corroborated by P.W. 76 who says "the payment of his final bill in connection with this work (building a hostel of 100 students at Patna) has not yet been made by the P.W.D.". There is no contradicting evidence on the side of the respondent but Mr. Verma has urged that the evidence that we have on record is not sufficient to prove that there was any due at all. We are unable to accept his contention. We are satisfied upon the evidence of Ishaque and P.W. 76 that the Public Works Department is yet to settle his account. The amount may be disputed but we are not concerned with that. No one alleges that nothing is due to him. In these circumstances, we do not see any reason to disbelieve the statement of Ishaque and P.W. 76 that Ishaque has yet to be paid for works done.

136. Mr. Verma has relied upon Exts. C and C/1 and wants us to conclude that by reason of payment of a sum of Rs. 14,847 in March, 1951 we cannot hold that any due is outstanding. Ext. C and C/1 are letters brought into existence for the purpose of this proceeding. They are in reply to queries by Respondent No. 1 during the pendency and for the purpose of this case. We do not say that they are collusive, fraudulent or anything of that kind, but we do not think that they can be substitute for evidence.

137. In view of the Supreme Court decision referred to above and in view of our findings that Ishaque had contracts with the Government and that his bills in respect of the contracts are still outstanding, it must be held that Ishaque was a person interested in a contract with the Government and consequently, was disqualified for being chosen as a candidate.

138. (f) The next question is whether the acceptance of Ishaque's nomination paper has materially affected the result of the election. Before we deal with the evidence on the point, it is necessary to set out the requirement of the law. Under Section 100(1)(c) the Tribunal shall declare the election to be wholly void if the result of the election has been materially affected by the improper acceptance or rejection of any nomination. What has to be proved, therefore, by positive evidence is that the result has in fact been materially affected. This is not proved by establishing the facts from which the inference can be drawn that the result may have been affected. There may be cases where the result can be demonstrated not to have been affected in the least, for example, where the votes received by a candidate, whose nomination has been improperly accepted, are much less than the difference between the votes secured by the returned candidate and the candidate securing the next highest votes. But even in cases where the result may have been affected, it must be shown that it was materially affected and the test to determine this has been laid down by the Supreme Court in *Vashist Narayan Sharma V. Deb Chandra* (A.I.R. 1954 Supreme Court 513). Their Lordships say that the result of an election cannot be said to have been materially affected unless the fact is proved "that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate"; that is to say, the Tribunal must be in a position to judge the fate of the votes cast in favour of the candidate illegally nominated and further must be able to hold that as a result a candidate who would have been defeated has been returned. Contrasting the position under the English Law with the requirements of section 100(1)(c), their Lordships point out that the burden of adducing the necessary proof, as indicated above, is clearly upon petitioner; and their Lordships point out that however difficult it may be to furnish such proof and however harshly it may operate upon the petitioner's claim, the "law is too clear for any speculation about possibilities".

139. Mr. Ishaque had received 779 votes. According to the test laid down by the Supreme Court the simple question for us is where would these votes go if

Ishaque did not contest the election? Would they be so distributed as to bring about the defeat of Respondent No. 1? In paragraph 8 of the petition, the statements in which are admitted by Respondent No. 1 in his written statement, the result of the polling is shown as follows:—

Respondent No. 1	..	..	..	..	7,794 votes
Petitioner	..	..	..	..	7,256 "
Respondent No. 3	..	..	..	..	2,694 "
Respondent No. 4	..	..	..	..	1,515 "
Respondent No. 2	..	..	..	..	779 "
Respondent No. 7	..	..	..	..	754 "

From the figures given above, it is clear that in judging the probable distribution of Ishaque's votes all other candidates excepting the petitioner and Respondent No. 1 may be excluded from consideration because even if any one of them got all the votes of Ishaque, the result would not be affected at all. Mr. Verma, therefore, rightly we think, has contended that it is necessary to prove either of two things to force a conclusion that the returned candidate would have been defeated; either that the petitioner would have got 539 votes secured by Ishaque, none of the rest going to Respondent No. 1, or that the petitioner would have got 659 votes out of Ishaque's votes. The difference between the votes secured by the petitioner and Respondent No. 1 respectively being 538, the petitioner in the first case, would have secured a majority of one (Respondent No. 1 not getting a single vote out of Ishaque's votes). In the second case if the petitioner secured 659 votes out of Ishaque's 779, his total votes would be 7,915 which could not be equalled by Respondent No. 1 even if he secured the entire balance of the votes of Ishaque (120 votes) which would have given him 7,914 votes.

140. We have, therefore, to approach the evidence keeping in mind the test indicated above. As is to be expected, there is only oral evidence on this point. The witnesses on behalf of the petitioner are P.Ws. 20, 48, 53, 60, 67, 69, 70 and 75 and the respondent's witnesses are R.Ws. 1, 3, 4, 12, 13, 16, 25, 29, 32, 33, 35 and 38.

141. P.W. 20 is Md. Daud. He says that he canvassed for Md. Ishaque and worked as his polling agent at Mandil and Chanpura booths. According to him, the voters whom he approached told him that they had decided to vote for the Congress candidate but would vote for Ishaque if they were entertained. That is all that he says. He does not say that the voters were entertained and were thus won over to Ishaque's side. Therefore, these voters presumably did not vote for Ishaque at all and consequently their votes do not count in the consideration of this matter. Furthermore in cross-examination the witness names only three voters who are said to have told him what is stated above. P.W. 48 is Abdul Hai of Kako. He was the polling agent of the petitioner at Kako booth. All that he says is that he heard Ishaque speaking to Moin Saheb and Shahanat requesting them to vote for him and that they told Ishaque that Fida Hussain had canvassed for their votes and that there was a possibility that they might still change their mind in favour of Ishaque. Nothing can be inferred from such evidence. The next witness is P.W. 53, another man of Kako. He offers similar evidence. He heard a talk between one Ghulam Shamdani and the petitioner. According to him, Ghulam Shamdani told the petitioner that if Ishaque did not stand as a candidate, his votes would have gone to the petitioner. This evidence is worthless as he has merely heard another person (not examined, although according to this witness he is alive) expressing an opinion. He does not even remember whether the petitioner requested him for his vote. The next witness is Abdul Rahman (P.W. 60) of Kako, who had worked for the petitioner at first and then for Ishaque and is now deposing for the petitioner. He claims to have persuaded the voters, who, according to him had decided to vote for the petitioner, to change their minds in favour of Ishaque. But in cross-examination he names only three such persons. P.W. 69 is Md. Ahsan of Irki. He had worked for Ishaque for only a fortnight and he volunteers that he voted for Ishaque. He does not speak about other voters but says only about himself that he would have voted for the petitioner if Ishaque was not in the field. P.W. 70 is Ishaque's cousin. He says that he worked for the Congress candidate for about a month and then being pressed by Ishaque he worked for him for fifteen days. According to him, he himself and two other persons told Ishaque that they would vote for him if he contested the election, otherwise they would vote for the Congress candidate.

142. There remains Md. Ishaque (P.W. 67) and the petitioner himself (P.W. 75). Ishaque says that during his canvassing he was finding difficulty in persuading the voters to vote for him. Those that belonged to the Kisan

Party expressed their desire to support the Socialist candidate and those who were sympathisers of the Congress party expressed their desire to vote for the Congress candidate. He appealed to Muslim voters to vote for him in preference to the petitioner as he is, and the petitioner is not, an orthodox Muslim. Then he makes a statement from which we are unable to draw any favourable inference for the petitioner. He says—"The voters used to say generally that if I would withdraw and would not spend money then they would vote for Fida Hussain because he was a true member of the Congress and if I did not withdraw, they would vote for the Socialist, because they had promised to distribute lands at the rate of 20 bighas per head". This is a curious statement. According to him, the voters did not favour him at all, and whether they favoured Fida Hussain or the Socialist candidate, would depend on his standing for or withdrawing from the election. Mr. Singh could not urge upon us any sensible inference from this statement. Ishaque, however, did not withdraw. Therefore, if the voters were true to their declaration, they must have voted for the Socialist candidate. This witness does not say clearly anywhere in his deposition that he had managed to secure some votes which would have otherwise gone to the petitioner. The petitioner himself (P.W. 75) has given meagre evidence on this point. He makes a general statement that he had to face the propaganda on behalf of Ishaque and the voters told him that although they had decided earlier to vote for him they would vote for Ishaque since he was a candidate. He does not mention how many people told him so. The only definite statement that he makes is that he had been to Kako and had talked to two men Ghulam Shamdani and Ali Ahmad who said that they would vote for him if Ishaque was not a candidate. In cross-examination he says that the voters of Kako, Irki and Mohanpur had told him that they would vote for him if Ishaque withdrew. But he says that he does not remember their names. Now we know from "Form 14—Form of Account of Ballot Papers" that Ishaque polled only 65 votes in Kako booth on four days and 49 votes at Irki. But it appears that there was no polling booth at Mohanpur which falls under Amain booth (vide Ext. 7). The polling station there includes 6 other villages including Amain itself besides Mohanpur. At that booth 39 votes in all were polled for Ishaque. Out of them 19 only were polled on 1st day, on which day Mohanpur with 4 other village were to poll. Proportionate division would thus give only 4 votes to Mohanpur. Hence even assuming that the said number of votes would have gone to the petitioner, it could not certainly have materially affected the result of the election.

143. This is all the oral evidence on behalf of the petitioner. In our opinion, this evidence is so hopelessly inadequate that it is impossible to draw an inference that the votes that were cast in favour of Ishaque would have been so distributed as to bring about the defeat of Respondent No. 1. As will be seen from what has been stated above, making all possible allowances in favour of the petitioner, the number of votes that the petitioner might have received if Ishaque were not a candidate could not exceed one hundred and eighteen. Mr. Verma has also urged that the cross-examination of several of the petitioner's witnesses shows that the votes secured by Ishaque were likely to go to the Socialist candidate rather than to the Congress candidate. He points out that some of the petitioner's witnesses (e.g. P.Ws. 2 and 6) admit that the voters were generally divided into two camps, those in favour of the Congress and those against it; and other witnesses of the petitioner admit that Respondent No. 1 had worked for the benefit of the poorer classes, whom Ishaque admits to have approached. It is, therefore, said that the voters who voted for Ishaque were against the Congress and in the absence of Ishaque, would have voted for Respondent No. 1 who had worked for the poor. Any definite conclusion on this matter is difficult to draw. As the Supreme Court said in A.I.R. 1954 Supreme Court 513 (at page 516)—"The casting of votes at an election depends upon variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates". However that may be, we feel certain that the petitioner has not established that an appreciable proportion of the votes cast in favour of Ishaque would have gone to him.

144. In view of the fact that the petitioner's own evidence falls far short of the desired standard to satisfy the test that we have indicated above, we do not think it is necessary to examine in detail the evidence adduced on behalf of Respondent No. 1. Some of his witnesses (e.g. R.Ws. 13, 16, 29 and 35) have said that they would have voted for him if Ishaque was not a candidate. Others (e.g. R.Ws. 1, 3, 32, 33 and 38) have stated that the majority of the voters were against the Congress and that Ishaque's votes would have come to the Socialist candidate. Although it is difficult to conclude what proportion of votes would have gone to Respondent No. 1 if Ishaque were not a candidate, there is no doubt

that the petitioner has failed to prove that sufficient number of votes would have gone to him.

145. Upon a consideration of the entire evidence, we hold that the petitioner has failed to prove that the result of the election has been materially affected by improper acceptance of the nomination paper of Md. Ishaque.

Issue No. 5

146. Mr. Verma for Respondent No. 1 has seriously urged that this election petition is not maintainable and that at any rate certain allegations in the petition are not fit to be tried and his argument is based upon the contention that the petition does not conform to the requirements of section 83 of the Act. The question divides itself into two parts: (a) In what respect the petition contravenes section 83 and (b) what is the effect of such contravention? With regard to the first part of the question, Mr. Verma has raised the following points: firstly, the petition does not contain, as required by section 83 sub-section (1), "a concise statement of the material facts" in respect of certain allegations made therein; secondly, certain other allegations do not find place in the petition itself but in the "schedule" attached to the petition; and, thirdly, that certain other allegations of corrupt practice are not supported by full particulars in the "schedules" as required by section 83, sub-section (2).

147. With regard to the second part of the question, Mr. Verma argued that either the petition should be dismissed, or, at any rate, the particular allegations, which do not conform to section 83, should be struck off from the petition. This point was taken as a preliminary point and has been disposed of in our previous orders No. 18, dated 31st March 1955, No. 22, dated 12th April 1955, No. 28, dated 23rd April, 1955. In order No. 18, dated 31st March, 1955, we overruled the contention of Respondent No. 1 that the entire petition should be dismissed for non-compliance with section 83 in regard to particular matters. Mr. Verma did not pursue this matter in his arguments.

148. So far as particular allegations are concerned, our previous order Nos. 22 and 28 dealt with the question of reception of evidence on matters with regard to which, according to Mr. Verma, sufficient particulars were lacking. In these two orders we dealt with the question whether evidence with regard to bribery and the incidents of violence at Chainpura and other places ought to be shut out or not and we held that we ought not to shut out evidence. In order No. 22 we observed "Hence we direct that evidence be gone into for what it may be worth, but only with regard to particulars already incorporated so that other side may not complain of having been taken by surprise". When the objection was again raised regarding evidence on the Chainpura incident, we held, in pursuance of our previous order (order No. 22), that the evidence was in line with the particulars already given. But the matter was not concluded by our previous order in so far as Mr. Verma's right to raise this question in argument was concerned. Mr. Verma has also strenuously urged the same points in argument. It is obvious that the previous orders were concerned, with a different matter, namely whether if Mr. Verma is correct as to the non-compliance of section 83, we are precluded from taking evidence.

149. However that may be, we have taken evidence on the points on which Mr. Verma complained that the petition was not in compliance with law and as a matter of fact, as will appear later, we have on the merits held in favour of Respondent No. 1. It is not therefore, necessary to deal elaborately with the contentions of law raised by Mr. Verma in respect of the requirements of section 83. Nevertheless, as great stress has been laid on these points, we shall have to deal with them in brief.

150. Section 83 of the Representation of People Act (1951) reads as follows:—

"Contents of petition.—(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioners and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth a full particulars of any corrupt or illegal practice which the petitioner alleges, including as full statements as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

- (3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, alleged the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition".

With regard to sub-section (1), Mr. Verma has confined his argument to three matters with regard to which he says that it amounts to total absence of the concise statement of the material facts in the petition inasmuch as these matters are referred to in the list of particulars (described as schedules) attached to the petition and not in the petition itself. The allegations contained in the schedules and not in the petition are (a) that at Kanari many voters had to go away on account of confusion created by the absence of the Presiding Officer till 3 P.M.; (b) that at Bistol booth the sudden arrest of Kailash Singh, a Congress worker, created a panic and scared away the voters; (c) that the Presiding Officer was canvassing for the Socialist candidate in Bistol booth and (d) that Respondent No. 1 had for a number of days fed his workers at Jahanabad but had not included the cost incurred in his return of election expenses.

151. We are of opinion that Mr. Verma's objection is a matter of form rather than of substance. As we have said in our previous order, dated 31st March, 1955, the petition has been drafted very carelessly. Nevertheless, we think that reading the petition along with the schedules attached thereto there can be no doubt that in substance there has been compliance with section 83 in respect of the matters referred to above. Referring to sections 80, 81, 83, 86, 87 and 90 of the Act, Mr. Verma points out that the distinction between the petition and the list of particulars is maintained throughout in Chapter II, Part VI of the Act, and, therefore, when sub-section (1) of section 83 requires a concise statement in the petition itself, the defect will not be cured by inclusion of such statements in the list of particulars. He also emphasises that under section 86 we are trying the petition and not the list of particulars. He refers to the case of Dhaveshwar Verma v. Debraj Sethi (Indian Election Cases by Sen and Poddar at page 504) which relied on the case of Sardar Waryam Singh v. Sir Sundar Singh Majithia reported at page 115 of the same volume. The latter case is clearly distinguishable because the petition contained a charge of bribing the electors whereas the list of particulars relating to this matter referred to a charge of a different kind, namely, bribery of inducing a candidate to withdraw. In the former case particulars were given in the list of particulars of a corrupt practice not alleged in the petition. Another case reported in 6 E.L.R. 197 on which Mr. Verma relied has no relevancy to this particular point as a new case was sought to be argued at the hearing. None of the cases deals with the situation where a concise statement of a matter (not necessarily a corrupt practice) is given in the particulars instead of in the petition. If the cases cited by Mr. Verma go to the length of laying down that an averment set out in a schedule to a petition will not in any circumstance be regarded as a part of pleading, we are not prepared to go so far. Section 83, as the head-note indicates, deals with the "contents of petition". True, there is a distinction between the list of particulars and the petition but that does not mean that together they do not make up the contents of the petition. Take for instance a case where all the necessary particulars of a corrupt practice are given in the petition but not in a separate list of particulars. Strictly speaking, there is no list of particulars in accordance with sub-section (2) of section 83 but Mr. Verma frankly admits that in such a case the petition satisfies section 83. There is no reason why the substance is to be disregarded in a converse case. We are not, therefore, prepared to hold that an allegation is to be disregarded because it is misplaced. There is a further reason why we cannot accept Mr. Verma's contention. As Mr. B. K. N. Singh points out, paragraph 23(a) of the petition incorporates by reference such of the averments as are set out in the schedules but are not contained in the preceding paragraph. Paragraph 23(a) reads as follows:—

"That it be declared by the Election Tribunal that the election of the returned candidate on the grounds mentioned in schedule I, II and III and IV and in para. 4 to 7 of the election petition as well as on such other grounds pressed at the time of hearing is void".

152. In our view the true distinction between the averments in the petition and in the list of particulars respectively is that if a corrupt practice (under section 123 or under section 124 of the Act) is alleged, it must be particularised and wherever the petition alleges such corrupt practices it must be accompanied by a list containing the particulars thereof. This, however, appears to us not to be a matter of form but of substance. For, if it were otherwise, a petition that contained all the particulars of a corrupt practice but is not accompanied by

a separate list ought to be disregarded in so far as the corrupt practices alleged are concerned. In our opinion, therefore, Mr. Verma is not entitled to succeed on his first point.

153. The more serious objection relates to the interpretation of sub-section (2) of section 83. Mr. Verma complains of insufficient particulars with regard to certain allegations. We have already referred to our previous orders but the matter requires consideration with reference to section 83(2) in view of the respective contentions of the parties at the hearing. Mr. Singh urges that since evidence has been taken, in view of our previous orders, the questions with which we are concerned have to be decided on merits. Mr. Verma contends that in spite of evidence being taken the allegations must be struck off if we find that the particulars regarding them fall short of the legal requirements.

154. As we have said above, we decided against the respondent in our previous orders on the limited question whether evidence should be taken or not. We think, therefore that Mr. Verma is entitled to raise the question again.

155. The matters on which this particular complaint is made are as follows:— (a) that with regard to the allegations of violence, assault and intimidation at Maniawan, Hati and Chainpura booths, the names of the guilty persons and the exact place and date are not given; (2) that with regard to some pamphlets said to have been distributed by Respondent No. 1, the time and place and the name of persons to whom the pamphlets were given are not mentioned; (3) that with regard to the allegation of carrying voters to polling booths in a truck, the particulars do not specify the names of voters and their villages, the names of the owner and driver of the vehicle etc., and (4) that with regard to the allegation of bribery, the date and place are not mentioned.

156. We do not propose to examine Mr. Verma's contention with reference to each of the matters set out above because each of them has been decided against the petitioner on merits. We are dealing here with Mr. Verma's submissions on the general principle that wherever the particulars are not full, the Tribunal has to exclude from consideration the particular charge of corrupt practice.

157. The interpretation of section 83(2) itself is not an easy matter. The word 'particulars' is not defined anywhere. What is the difference between particulars and evidence is not very easy to define or explain except perhaps by examples. It is easy to illustrate the difference between the two. For instance, a man is alleged to have committed an act of bribery; the name of the person bribed may be a constituent element of the act and therefore one of its particulars, but the name of the person who saw the act of bribery is a matter of evidence. But to lay down a test, which determines where particulars stop and evidence begins is a matter of considerable difficulty. For the sake of simplicity, one might describe, although not very accurately, a particular as being a detail of a matter. As the details ramify, they may shade into evidence.

158. The question that arises is what are "full particulars"? Does the law require full details in the literal sense? The difficulty involved in this question can be illustrated with reference to the respective contentions of Counsels on both sides with regard to the third matter enumerated above. Mr. Singh says that it is sufficient to say that the candidate or his agent used a truck to carry voters to particular booths mentioned. To state so would be disclosing the essential details of the matter. Mr. Verma says that that would be quite insufficient. In order to disclose full details, the petitioner must state the registration number of vehicle, the names of voters who were carried in it, the village to which they belonged, the exact spot to which they were carried, the name of the owner and the driver of the vehicle and so on. The fact that the opposing contentions are supported by decisions of Election Tribunals illustrates the difficulty of the question. In 4 E.L.R. 381 9 (at page 397) the Dharwar Tribunal held that "it is sufficient in an election petition to state the date of procuring the motor trucks and the motor trucks procured but it is not necessary to state at what polling station electors had been conveyed. This is because the corrupt practice defined in section 123 (6) is the procuring of trucks and not the conveying of electors". On the other hand, the Bhopal Tribunal required from the petitioner all the details mentioned by Mr. Verma (see 4 E.L.R. page 401 at pages 417-18). Mr. Verma has filed a certified copy of a recent decision of the Patna High Court in M.J.C. 36 of 1954 decided on 12th April 1955. In that case the Tribunal had, in the exercise of its powers under section 83(3), ordered further particulars, namely the names of voters alleged to have been carried in vehicles (and also the names of voters bribed) to be furnished before the petitioner adduced evidence on this point. This order was sought to be quashed and the High Court held that the Tribunal was perfectly justified in asking for those

particulars. There can be no question that whether or not the particulars as filed are full particulars under section 83(2), the Tribunal has a discretion to consider its sufficiency and may require such further and better particulars as in its opinion are necessary for the purpose of ensuring fair and effective trial. Mr. Singh, therefore contends that if the Tribunal thinks that better particulars should be furnished, the matter is entirely different and consequently the High Court decision upholding the Tribunal's order does not involve the determination of the questions as to what are insufficient particulars which render the petition so defective as to entail the dismissal of the allegations. Mr. Singh's argument is not without force. But it has to be remembered that the question whether the name of a voter is one of the required particulars in an allegation of that kind was raised and decided by the High Court. The petitioner before the High Court maintained that what the Tribunal required by its order was not particulars but evidence. The High Court decided that that was not evidence but one of the particulars of the allegation.

159. The above cases, however, do not lay down a test to determine what are "full particulars". In view of the High Court's decision it may now be taken as decided that ordinarily if the petitioner alleges a corrupt practice under section 123(6), the names of the voters carried by vehicles are particulars that must be mentioned. But even this does not solve the entire difficulty. Are the names of voters to be regarded as an essential particular irrespective of the circumstances of the case? Take a case where the petitioner alleges that a candidate or his agent procured a vehicle in which a number of female voters in *burkha* were carried to a particular booth. Witnesses may have seen these persons proceeding to the booth and receiving ballot papers. But their identity remains undisclosed. In such a situation where the petitioner says that it is not possible to furnish the particulars if the allegations are to be regarded as deficient in an essential matter then the petitioner has no right to get such an allegation tried although it is a very serious matter. If the names of the voters is an essential particular irrespective of the circumstances then the Tribunal must hold that the petition is defective in that respect. It is clear that even if the Tribunal required further particular it could not be given. In such a case a serious charge could not be tried at all.

160. In our view the legal requirement is that such particulars must be supplied as can be reasonably regarded as full particulars in the circumstances of the case.

161. Since the conclusion of the hearing of this case a decision of the Supreme Court has been reported in A.I.R. 1955 Supreme Court 610 in which their Lordships have considered the question of non-compliance with section 83(2). In that case the petitioners, who were two electors, had alleged several corrupt and illegal practices on the part of the returned candidate, particulars of which were set out in nine paragraphs of the schedule attached to the petition. All these statements in the schedule except the statement in paragraph 1 were so vague and general that they hardly amounted to any particulars of the allegations made in the petition. With regard to the requirements of particulars, their Lordships observed: "Section 83(2) requires not only what may reasonably be considered 'full particulars' having regard to the nature of each allegation, but enjoins in terms that the following particulars should also be given." The words italicised by us in the passage quoted above are significant. No hard and fast rule can be laid down as to what are full particulars. It will depend on facts and circumstances regard being had to the nature of the allegation in respect of which one may reasonably expect full details. It is to be observed that in remanding the case the Supreme Court directed the Tribunal to try the issue arising out of paragraph 1 of the particulars quoted by their Lordships at page 619. In this paragraph the allegations were that there was a meeting at a Gurudwara in the month of December, 1951 where the local Sikh community had assembled for a ceremony on the 7th day of the death of the daughter of one Sardar Surat Singh and that at this meeting Respondent No. 1 canvassed for votes and paid a donation to the Gurudwara which was really in the nature of a bribe to the Sikh community. In their Lordships' opinion this constituted sufficient particulars of the allegation of bribe. One observes that so far as this particular was concerned, fuller details might well have been supplied. For instance, the actual date is not given (Respondent No. 1 in that case was left to find out for himself the date of death of the daughter of Sardar Surat Singh). Furthermore, as it was a case of bribery of the Sikh community or, at any rate, the Sikhs assembled in that meeting, the respondent might complain (as indeed he did in paragraph 9(d) of his written statement quoted at page 617 of A.I.R. 1955 Supreme Court, 610) that the names of some of the Sikhs assembled there should have found place in the petition.

That was also lacking. Nevertheless, the Supreme Court thought that the particulars supplied were sufficient and the allegations ought to be tried. It is, therefore, clear that although section 83(2) should be strictly complied with, all that is required is that the particulars must be reasonably sufficient.

162. On the first part of the question, therefore, our conclusions are as follows: (a) full particulars do not mean all conceivable details connected with the act which is alleged to be corrupt or illegal; (b) what is to be regarded as full particulars will depend upon the nature of the allegation; (c) there may be circumstances which render the particulars supplied sufficient, which would not have been sufficient in different circumstances; (d) at any rate, certain details are essential, namely, the name of the person guilty of the alleged corrupt practice, the place and time of commission of such practice and the petitioner should make as full a statement as possible of these details.

163. Coming to the second part of the question, namely what is the effect of particulars falling short of the legal requirement, we have to deal with Mr. Verma's contention that the Tribunal has no discretion at all and if particulars as required by section 83(2) are not furnished, the allegation must be struck off even if we are inclined to accept the evidence adduced by the petitioner on these points. It has to be observed that in respect of particular allegations, the Act does not say what is the consequence of insufficient particulars. Mr. Verma urges that since section 83 is in a mandatory form, the necessary consequence should be that the allegation must be struck off. But that does not necessarily follow from the mandatory form in which the section has been enacted; for, it could not be enacted in any other form. If the legislature required, as it does require in sub-section (2), that full particulars must be supplied, it could not have said that the petition "may" be accompanied by a list of particulars leaving it to the choice of the petitioner. Therefore, the fact that the section uses the word "shall" by no means indicates clearly what consequences should follow from non-compliance.

164. Section 85, so far as the Election Commission is concerned, and section 90(4), so far as the Tribunal is concerned, provide for dismissal of the "petition" for non-compliance with, amongst other provisions, section 83. We have already dealt with the contention that the entire petition should be dismissed in limine if one or more allegation of corrupt practice is not supported by full particulars. This was what was done by the Election Tribunal, whose decision went to the Supreme Court on appeal in the case cited above, and their Lordships observed that this was "too narrow a view of their function in dealing with the various alleged defects in the petition" and held that in dismissing the petition outright the order of the Tribunal was clearly erroneous.

165. If it is the duty of the Tribunal, as Mr. Verma contends, not to try an allegation in respect of which it finds full particulars lacking, there would be no object in conferring powers upon the Tribunal to ask for better particulars [sub-section (3) of section 83]. It seems to us, therefore, that a distinction must be made between cases where the particulars are so meagre or vague as not to amount to particulars at all (as in the case before the Supreme Court) and cases where there has been partial compliance with section 83(2); and it seems further to us that in the latter cases it is always a question of degree. If the essential particulars are there, although they may not amount to "full particulars" in the literal sense there is a case to be tried. But if the particulars given are deficient in respect of essential details then the Tribunal may either strike off the allegation or ask for better particulars. No hard and fast rule can, in our opinion, be laid down. We have already held in our previous orders that the particulars of corrupt and illegal practices are sufficiently stated to enable us to try the issues involved. Evidence has been taken on these issues and as these issues have been decided on merits against the petitioner there cannot be now any question of these being struck off.

Issues No. 14:

166. This appears to be a redundant issue, because apart from payment of 8 annas to some voters at some booths which we have considered under issue No. 13, there is neither any allegation nor any evidence on the point of any sort of treating to voters by respondent No. 1 at or near any booth. Therefore, this issue requires no consideration.

Issue Nos. 16, 17 and 19:

167. From our findings above, it follows that the election of Respondent No. 1 is not fit to be set aside and the petitioner is not entitled to be declared elected and as a matter of fact he is entitled to none of the reliefs claimed by him.

168. The election petition is in the result dismissed with costs, which we assess, under the circumstances and in view of the protracted trial of this case, at a lump sum of Rs. 1,000 to the contesting Respondent No. 1.

Chairman.

Member.

Member.

[No. 19/215/52-Elec.III/11541.]

By order,

P. S. SUBRAMANIAN,
Secy. to the Election Commission.

